SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S),

Plaintiff,

-against-

GREGORY WERNER,

Defendant,

Index No. 169-2014

NOTICE OF MOTION TO DISMISS

Name of Assigned Judge:

Oral Argument is Requested
[ ] (check box if applicable)

Upon the affidavit of Gregory Werner dated November 3, 2014, the affirmation of Mitchell L. Pashkin dated November 5, 2014 and the supporting papers annexed hereto, Plaintiff will move this court located 20 County Center, Putnam County Office Building, Carmel, NY 10512 on the 2nd day of December 2014, at 9:30 a.m. for an order pursuant to (1) CPLR 3211 (a) (5) dismissing this action with prejudice based on Plaintiff filing this action after the expiration of the statute of limitations, (2) CPLR 3211 (a) (3) based on Plaintiff's lack of authority to sue in New York State, and (3) CPLR 3211 (a) (7) for a failure to plead each assignor's communication of the assignment to Defendant, and any other relief which this court deems proper.

The above-entitled action is for the breach of a student loan agreement.

This is a motion for or related to interim maintenance or child support [ ] (check box if applicable).

An affirmation that a good faith effort has been made to resolve the issues raised in this motion is annexed hereto [ ] (check box if applicable).

Pursuant to CPLR 2214(b), answering affidavits are required to be served upon the undersigned at least seven days before the return date of this motion. [X] (check box if applicable)

Dated: November 5, 2014

____

Mitchell L. Pashkin, Esq.
Attorney For Defendant
775 Park Avenue, Ste. 255
Huntington, NY 11743
(631) 629-7709

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S),

Plaintiff,

-against-

GREGORY WERNER,

Defendant.

Index No. 169-2014

AFFIRMATION

Mitchell L. Pashkin, an attorney at law duly admitted to practice law in the courts of the State of New York, hereby affirms under penalties of perjury:

1. I am the attorney for Defendant.
2. This action is to collect a private and non-government insured student loan taken out by Defendant. As explained and shown by the documents referenced below, the loan eventually was assigned to Plaintiff.
3. This action was commenced by filing the Summons and Complaint with the court clerk on January 28, 2014. Copies of the Summons and Complaint are annexed hereto as Exhibit A.
4. Defendant timely served his Answer annexed hereto as Exhibit B.
5. The agreement between Defendant and the original creditor was provided by Plaintiff during the course of discovery and is annexed as Exhibit C.
6. As evidence by the correspondence between the attorneys for the parties annexed as Exhibit D, many of the below facts either are agreed upon by the parties or not disputed by Plaintiff's attorneys.

7. Per the first page of the loan document, on each of the four loans, my client chose the "Full Deferral Repayment Option". Based on this choice, the following provisions of the loan documents control:

> Section C 3. (a) "Deferment End Date" will be will be 180 days after the Student graduates or ceases to be enrolled at least half-time in the School"
>
> Section C 4. "The "Repayment Period" begins the day after the Deferment Period ends.
>
> Section E. 2. Repayment Period "during the Repayment Period…I will pay the Monthly Payment Amount shown on my monthly statement….I understand that the Monthly Payment Amount is due each month."
>
> Section I. "…I will be in default…if: (1) I fail to make any monthly payment to you when due.

8. As evidenced by the attached transcript and affidavit of Defendant annexed hereto, Mr. Werner was last enrolled at least half-time during the Spring 2007 semester which ran between January and May 31, 2007; and he actually stopped going to school in January 2007. Based on the above, he was last enrolled at least half-time at the latest at the end of the Spring term, May 31, 2007. In the September 11, 2014 letter from Plaintiff's attorneys, they expressly admit the truth of the above facts regarding Mr. Werner's enrollment.

9. As set forth in Mr. Werner's affidavit, no payment ever was made on the loan. In the September 11, 2014 letter from Plaintiff's attorneys, they expressly admit that no payment ever was made on the loan. Plaintiff's responses to Defendant's discovery demands (Exhibit E) indicate that Plaintiff has no information as to a last pay date. The transaction history (Exhibit F) provided as part of Plaintiff's responses to

Defendant's discovery demands shows no payments. In fact, the transaction histories specifically indicate that no principal or interest ever was recovered.

10. If Mr. Werner stopped being enrolled at least half-time at the end of January 2007, then the following applies:
    a. Per Section C 3. (a) of the loan document, the "Deferment End Date" would be July 31, 2007;
    b. Per Section C 4. of the loan document, "The "Repayment Period" would begin on August 1, 2007;
    c. Per Section E. 2. of the loan document, the first payment would have been due by August 31, 2007; and
    d. Per Section I. of the loan document, Mr. Werner would be in default as of September 1, 2007 if he failed to make a payment by August 31, 2007.
11. If Mr. Werner ceased to be enrolled at least half-time at the end of the Spring term, May 31, 2007 at the latest, then the following applies:
    a. Per Section C 3. (a) of the loan document, the "Deferment End Date" would be November 27, 2007;
    b. Per Section C 4. of the loan document, "The "Repayment Period" would begin on November 28, 2007;
    c. Per Section E. 2. of the loan document, the first payment would have been due by December 31, 2007; and
    d. Per Section I. of the loan document, Mr. Werner would be in default as of January 1, 2008 if he failed to make a payment by December 31, 2007.

12. In addition to Section I. of the loan document, the courts also specifically and expressly hold that it is the date of the default/breach and the date on which the creditor has the right to make the demand rather than the date of the demand or the charge-off date that controls: Wells Fargo Bank v. JPMorgan Chase Bank, 12 Civ. 6168, NYLJ 1202649981460, at *1 (SDNY, Decided March 27, 2014); Deutsche Alt-A Secs. Mortg. Loan Trust v.DB Structured Prods, 2013 U.S. Dist. LEXIS 104417, 2013 WL 3863861 (SDNY 2013); Hahn Automotive Warehouse, Inc., Respondent, v American Zurich Insurance Company et al., 18 N.Y.3d 765; 967 N.E.2d 1187; 944 N.Y.S.2d 742; 2012 N.Y. LEXIS 582; 2012 NY Slip Op 2344 (2012); Elie, Int'l, Inc. v Macy's W. Inc. (1st Dept. 2013) 106 AD3d 442, 965 NYS2d 52; Nomura Asset Acceptance v Nomura Credit, 39 Misc.3d 1226(A), 971 NYS2d 73 (2013); and Corporate Serv. Bur, Inc. v law Firm of Hall & Hall, LLP, 36 Misc.3d 1220(A), 959 NYS2d 88 (Civil Court, Richmond, 2012). Again, as explained above, the date of the default/breach was either September 1, 2007 or January 1, 2008.

13. The applicable statute of limitations for the commencement of this action is six years pursuant to New York's borrowing statute, CPLR 202, and New York's statute of limitations governing breach of contract actions, CPLR 213. The loan documents do have an Ohio choice of law provision; but, as explained by the Court of Appeals in Portfolio Recovery Associates LLC v. King, 14 N.Y.3d 410, 927 N.E.2d 1059, 901 N.Y.S.2d 575, 2010 N.Y. Slip Op. 3470 (N.Y., 2010), the lawsuit still had to be brought within New York's 6 year statute of limitations:

> "Choice of law provisions typically apply to only substantive issues (see Tanges v Heidelberg N. Am., 93 NY2d 48, 53 [1999]),

and statutes of limitations are considered "procedural" because they are deemed "'as pertaining to the remedy rather than the right'" (id. at 54-55 quoting Martin v Dierck Equip. Co., 43 NY2d 583, 588 [1978]). There being no express intention in the agreement that Delaware's statute of limitations was to apply to this dispute, the choice of law provision cannot be read to encompass that limitations period." "When a nonresident sues on a cause of action accruing outside New York, CPLR 202 requires the cause of action to be timely under the limitation periods of both New York and the jurisdiction where the cause of action accrued" (Triarc, 93 NY2d at 528)."

14. The lawsuits were filed on January 28, 2014. This is over 6 years from the outside date of default of December 31, 2007.

15. In the September 11, 2014 letter from Plaintiff's attorneys, they argue that "there were (2) separate forbearances which tolled any repayment obligations." This letter also asserted that the forbearances were provided in Plaintiff's discovery responses.

16. There is a document (Exhibit G) in the discovery responses indicating the forbearances Plaintiff's attorneys' reference in their September 11, 2014; but there is no document signed by Mr. Werner or the co-borrower or even an actual letter to Mr. Werner or the co-borrower.

17. Any forbearance which may have occurred did not toll the statute of limitations pursuant to either the loan document or the law. The loan document, including but not limited to Section "H. FORBEARANCE" does not contain any language providing for a tolling of the statute of limitations, default date, "Deferment End Date", or "Repayment Period".

18. Section L. of the loan document alleges as follows: "7. A provision of this Credit Agreement may only be modified if jointly agreed upon in writing by you and me.

Any modification will not affect the validity or enforceability of the remainder of this Credit Agreement." Per this section and N.Y. GOB. LAW § 15-301, the aforementioned unilateral unsigned forbearances cannot alter the terms of the loan document or toll the statute of limitations. North Bright Capital, LLC v 70S Flatbush Realty, 66 AD3d 977, 889 NYS2d 596 (2d Dept 2009).

19. Also, per the parol evidence rule and the statute of frauds, only a document signed by Mr. Werner or the co-borrower could have altered the loan documents. See ASSOCIATED TRANSPORT, INC. v. GENERAL EXPRESSWAYS, INC., 238 N.Y.S.2d 393, 37 Misc.2d 446:

> "A request for forbearance unaccompanied by any misrepresentation or false statement in the [37 Misc.2d 448] absence of any promise or agreement not to plead the Statute of Limitations will not estop the party seeking to raise that defense. (Shapley v. Abbott, 42 N.Y. 443 [1870]; Wakulaw v. State Bank, 214 App.Div. 673, 212 N.Y.S. 733 [1925].). As the court said in the last-cited case at page 678, 212 N.Y.S. at page 737 'If a mere request of a debtor for delay in the performance of a contract would estop him from pleading the statute, the policy of law relative to the Statute of Limitations would be subverted.'"

See also RACHLIN & CO. v TRA-MAR, INC., 33 A.D.2d 370, 308 N.Y.S.2d 153 (1st Dept. 1970):

> "Shortly after the closing of title, the sum of $20,000 was paid to plaintiffs on account of the commissions, leaving a balance of $2,500 due on the first installment. The said sum, due in May 1955, was not paid and has not been paid, and the defendants assert the statute of limitations as a bar to recovery thereof. The plaintiffs, however, allege that, at about the time of the closing of title, the parties agreed that this portion ($2,500) of the commission should also be paid upon the satisfaction of the third mortgage, thus postponing the date of payment. Although there is some evidence of an understanding that the defendants would pay the $2,500 at the later time, it does not appear from the record that there existed any binding agreement between the parties for an extension of the time of payment. In point of fact, there is no

> showing of any consideration for an agreement of forbearance. 'To allow the statute to be tolled by discussions and alleged parole understandings, without suggestion of fraud, would tend to subvert the purpose and effect of the statute, and this, of course, is not to be permitted. (Shapley v. Abbott, 42 N.Y. 443; Wakulaw v. State Bank, 214 App.Div. 673, 212 N.Y.S. 733. Also Scheuer v. Scheuer, 308 N.Y. 447, 452, 126 N.E.2d 555, 558; Augstein v. Levey, 3 A.D.2d 595, 162 N.Y.S.2d 269, affd. 4 N.Y.2d 791, 173 N.Y.S.2d 27, 149 N.E.2d 528)' (Matter of Finkelstein (Harris), 17 A.D.2d 137, 140, 233 N.Y.S.2d 174, 178.) Under the circumstances, the right of plaintiffs to recover this balance of $2,500 is barred by the statute of limitations and the judgment should be modified accordingly."

Finally, see CRAWFORD v CANTOR, 440 N.Y.S.2d 661, 82A.D.2d 791 (1st Dept. 1981); North Bright Capital, LLC v 70S Flatbush Realty, 66 AD3d 977, 889 NYS2d 596 (2d Dept 2009); and Compañía de Inversiones de Engergía S.A. v AEI, Etc., 2011 NY Slip Op 00421 (1st Dept. 2011) ("We reject defendant's contention that a forbearance clause in the restructuring agreement served to toll running of the statute of limitations (*see* GOL § 17-103(1), (3); *Robinson v City of New York*, 24 AD2d 260, 262 [1965]; *Matter of Eberhard v Elmira City School Dist.*, 6 AD3d 971, 973 [2004]).")

20. Plaintiff does business in New York by virtue of the volume of their collection activity whether directly or indirectly through firms such as Plaintiffs' attorneys' and collection agencies such as MRS Associates. Highfill, Inc. v Bruce and Iris, Inc., 50 AD3d 742, 743 (2d Dept 2008); and S & T Bank v Spectrum Cabinet Sales, 247 AD2d 373, 373 (2d Dept 1998). Plaintiff is not authorized to do business in New York. Therefore, Plaintiff had no legal right to bring these lawsuits in New York; and these cases must be dismissed. MKC-S, Inc. v Laura Realty Co. 2014 NY Slip Op 50650(U); Scaffold-Russ Dilworth, Ltd. v Shared Management Group, Ltd. 256

AD2d 1087 (4th Dept 1998); and Parkwood Furniture Co. v OK Furniture Co., 76 AD2d 905, 905 (2d Dept 1980).

21. As evidenced by the documents included in Plaintiff's responses to Defendant's discovery demands (Exhibit G), this loan was assigned several times. Upon information and belief, Plaintiff cannot prove that each assignor notified Mr. Werner and the co-borrower of the assignment. This amounts to a bar to Plaintiff's right to obtain a judgment. Tri City Roofers, Inc. v. Northeastern Industrial Park, 61 N.Y.2d 779, 780 (1984); Strobel v RJM Acquisitions LLC, 2014 U.S. Dist. LEXIS 14936 (EDNY 2014); Musah v. Houslanger & Assocs., PLLC, 2013 WL 4516786, at *3 (S.D.N.Y. Aug. 26, 2013); Chase Bank USA, NA v. Cardello, 27 Misc 3d 791 (Civil Ct, Richmond Co. 2010) "[n]otice of assignment must be provided to the consumer from the assignor."); and South Shore Adjustment Co. v. Pierre (N.Y. Civ. Ct., 2011) 2011 NY Slip Op 51436.

WHEREFORE, Plaintiff prays for an order pursuant to (1) CPLR 3211 (a) (5) dismissing this action with prejudice based on Plaintiff filing this action after the expiration of the statute of limitations, (2) CPLR 3211 (a) (3) based on Plaintiff's lack of authority to sue in New York State, and (3) CPLR 3211 (a) (7) for a failure to plead each assignor's communication of the assignment to Defendant, and any other relief which this court deems proper.

Dated: November 5, 2014

____

Mitchell L. Pashkin, Esq.
Attorney For Defendant
775 Park Avenue, Ste. 255
Huntington, NY 11743
(631) 629-7709

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S),

Plaintiff,

-against-

GREGORY WERNER,

Defendant.

Index No. 169-2014

AFFIRMATION OF SERVICE

Mitchell L. Pashkin, an attorney at law duly admitted to practice law in the courts of the State of New York, hereby affirms under penalties of perjury:

That on November 6, 2014, I served this Notice of Motion and supporting papers, if any, upon Plaintiff by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State addressed to each of the following persons at the last known address set forth after each name:

Forster & Garbus LLP
Attorneys For Plaintiff
60 Motor Parkway
Commack, NY 11725

Dated: November 6, 2014
Huntington, NY

____
Mitchell L. Pashkin, Esq.
Attorney For Defendant
775 Park Avenue, Ste. 255
Huntington, NY 11743
(631) 629-7709

Index No. 169-2014

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S),

Plaintiff,

-vs-

GREGORY WERNER,

Defendant.

NOTICE OF MOTION TO DISMISS

Mitchell L. Pashkin certifies that, to the best of his knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed paper(s) or the contentions therein are not frivolous as defined in 22 NYCRR 130-1.1.(c).

____

Mitchell L. Pashkin, Esq.
Attorney For Defendant
775 Park Avenue, Ste. 255
Huntington, NY 11743
Tel.: 631.629.7709
Fax.: 631.824-9328
mpash@verizon.net

SUPREME COURT OF STATE OF NEW YORK
COUNTY OF PUTNAM
---X

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST (S),
Plaintiff

- against -

GREGORY WERNER
Defendant
---X

Index No. 169/14

Affirmation in Opposition To Motion to Dismiss

Assigned Justice:
Lewis J. Lubell, J.S.C.

Acct No. ending in 4654

TESS E. GUNTHER, an attorney duly admitted to practice law in the Courts of the State of New York, hereby affirms the following to be true, pursuant to CPLR §2106, and under the penalties of perjury states that:

1. I am an associate attorney with the law firm of Forster & Garbus LLP, attorneys for National Collegiate Student Loan Trust 2006-1, A Delaware Statutory Trust (s) , (hereinafter "Plaintiff"), and as such I am fully familiar with the facts and circumstances herein based upon the records and documents maintained by this office.

2. I make this Affirmation in opposition to the Motion brought by Defendant Gregory Werner (hereinafter "Defendant") seeking to dismiss this action. The motion fails to provide any grounds upon which the requested relief could be granted. For the reasons set forth herein, the motion must be denied in its entirety.

3. This action was commenced on January 28, 2014. On March 26, 2014 the Defendant was served with the Summons and Complaint pursuant to CPLR § 308(2). This lawsuit arose out of an unpaid loan owed by the Defendant to Plaintiff. A copy of the underlying promissory note, which has been redacted for security reasons, is annexed hereto as **Exhibit "A"**. The affidavit of service was duly filed with the Court on April 1, 2014. It should be noted that the Defendant does not challenge the validity of service of process in this action.

4. The Defendant's motion is based on the contention that the applicable statue of limitations has expired pursuant to the CPLR § 2111 (a) (3) and (5), Plaintiff lacks standing to sue, and CPLR § 3211

(a) (7) the pleading fails to state a cause of action must all be disregarded as a matter of law.

5. Defendant's allegation that the Statute of Limitation has expired must be dismissed as a matter of law.

6. As Detailed in the Bradley Luke Affidavit annexed hereto, on behalf of the Plaintiff, (hereinafter referred to as the "Luke Affidavit"), Defendant requested and was granted two (2) separate forbearances on this loan. Annexed hereto as **Exhibit "B"** are Defendant's requests for the forbearances, which have been redacted for security reasons.

7. Pursuant to the Luke Affidavit, the Defendant was granted forbearance from December 1, 2007 to May 31, 2008, and another from July 1, 2008 to December 30, 2008. Annexed hereto as **Exhibit "C"** is a copy of the Defendant/forbearance loan detail, which has been redacted for security reasons.

8. The Luke affidavit states that the loan was placed into repayment with the payment being due to be made on February 3, 2009. As stated, no payment was made by the Defendant.

9. It is respectfully submitted the breach in this action occurred when the Defendant failed to make his February 3, 2009 payment. Annexed as **Exhibit "D"** is the Defendant's repayment schedule, which has been redacted for security reasons.

10. Therefore, the statute of limitation in this action has not expired as the action was brought within six (6) years of Defendant's breach.

11. Defendant's allegation that Plaintiff is not authorized to do business in New York and therefore has no legal right to bring the instant action must be dismissed as a matter of law.

12. Defendant appears to be relying on Business Corporation Law Section 1312 (a) which prohibits out of state entities from bring an action in the courts of the State of New York without required authorization S&T Bank v. Spectrum Cabinet Sales, 247 AD2d 373, 668 NYS2d 641 (2nd Dept 1999).

13. In this case, it is undisputed that Plaintiff is an entity located outside of New York. It is undisputed that Plaintiff has commenced this action in this Court. It is undisputed that Plaintiff does not have authorization to do business in the State of New York. Based on these facts, Defendant may argue that Plaintiff is barred from bringing this action under BCL §1312(a).

14. Plaintiff can oppose this argument by claiming that all of Plaintiff's business is conducted outside the geographic boundaries of the state of New York. There is a presumption that an entity conducts its business in the state where it is formed, and Defendant has the burden of providing that the activities of the foreign entity are systematic and regular. Airtran New York, LLC. V. Midwest Air Group, Inc., 46 AD 3d 418 941 NYS 2d 144 (1st Dept 2012) In fact, Plaintiff's business is interstate commerce, and as such is beyond the scope of the statute. The Civil Court of the City of New York in Bayonne Block Co, Inc., v. Frank T. Porco 171 171 Misc 2d 684, 654 NYS 2D (Civ Ct 1996) held that activities "constitute the soliciting of business incidental to the sale and delivery of merchandise into the State, then the foreign corporation is engaged in interstate commerce and is constitutionally beyond the reach of section 1312" Id.

15. The United States District Court for the Eastern District of New York had a thorough interpretation of this question in Invacare Corp. v. John Nageldinger & Son, Inc. a copy of the decision is annexed hereto as **Exhibit "E"**, at 576 F. Supp 1542 (EDNY 1984) wherein the court held "...where there is no evidence of localized business activity, section 1312(a) cannot serve to bar a foreign corporation from maintaining an action."

16. Defendant has failed to provide any evidence at all of any activity by Plaintiff within the geographical confines of New York State. Defendant's attorney's allegations are merely hearsay and fail to provide any evidence to support his allegations. Based upon these facts, and the lack of evidence to displace the presumption that an out of state entity performs its business activities where it is located, it is contended that Plaintiff is not barred from maintaining this action by Business Corporation Law §1312 (a).

17. In addition, it should be noted that as stated in the Luke Affidavit, Defendant was sent notification that Plaintiff is the owner of the loan in this action on or about March 10, 2006.

18. Defendant's allegation alleging the Complaint fails to state a cause of action upon which relief may be granted must be dismissed.

19. As stated in the Complaint, upon information and belief, Defendant borrowed money from Plaintiff or Plaintiff's assignor pursuant to a promissory note. Defendant has defaulted on said agreement and $17,946.28 is now due, no part of said sum has been paid although duly demanded. Defendant is in default and demand for payment has been made. Consequently, Plaintiff has properly pleaded a cause of action for breach of contract.

20. Plaintiff's cause of action for an account stated has been properly pled. The Complaint states that Plaintiff stated an account to Defendant without objection and that there is an amount due and owing which has not been paid although duly demanded.

21. It is well settled that pleadings are to be liberally construed. Draftsmanship is secondary. Under the CPLR, if a cause of action can be spelled out from the four corners of the pleading, a cause of action is stated. See Siegel, New York Practice, 3rd Edition, 327.

22. Based on the foregoing Plaintiff has set forth the elements for breach of contract and account stated. Copies of the summons and complaint are annexed hereto as **Exhibit "F"**.

23. It is respectfully submitted that based upon the foregoing and as a matter of law, Defendant's motion must be denied in its entirety and the action be allowed to proceed on the merits.

WHEREFORE, Plaintiff respectfully requests that the Defendant's Motion be denied in its entirety, and for such other and further relief as this Court deems proper.

Dated: Commack, New York
December 2, 2014

Yours, etc.,

FORSTER & GARBUS, LLP
By: Tess E. Gunther, Esq.
Attorneys for Plaintiff
60 Motor Parkway
P.O. Box 9030
Commack, New York 11725-5710
(631) 393-9400

(PLEASE NOTE THAT WE ARE REQUIRED, UNDER FEDERAL LAW, TO ADVISE YOU THAT WE ARE DEBT COLLECTORS AND ANY INFORMATION WE OBTAIN WILL BE USED IN ATTEMPTING TO COLLECT THIS DEBT.)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

---X

Index No: 169/14

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST (S)

Plaintiff

- against -

AFFIDAVIT

GREGORY WERNER

Defendant

---X

STATE OF GEORGIA)
) ss.
COUNTY OF GWINNETT)

Before me, the undersigned authority, personally appeared Affiant Bradley Luke, Legal Compliance Manager, who being by me duly sworn, deposed as follows:

1. I am employed by Transworld Systems Inc., (hereinafter TSI) the designated Custodian of records for Plaintiff pertaining to the Defendant's education loans(s) forming the subject matter of the above-captioned Complaint. I am duly authorized to make the representations containing in this Affidavit and I am over the age of 18 and competent to testify to the matters of this Affidavit.

2. I am competent and authorized to testify relating to this action through personal knowledge of the business records, including the electronic data, which detail the education loan records. I also have personal knowledge of the record management practices and procedures of Plaintiff and the practices and procedures Plaintiff requires of its loan servicers and other agents.

3. This lawsuit arose out of an unpaid loan or loans owed by Defendant **GREGORY WERNER** to Plaintiff. Specifically Defendant entered into an education loan agreement at Defendant's special instance and request. A loan was extended for Defendant to use pursuant to the terms of the loan agreements. Defendant has failed, refused, and/or neglected to pay the balance or balances pursuant to the agreed repayment schedule or schedules.

4. Education loan account records are compiled and recorded as part of Plaintiff's regularly conducted business activity at or near the time of the event and from information transmitted from knowledge of the accounts or events described within the business record. Such records are kept, maintained, and relied upon in the course of ordinary and regularly conducted business activity.

5. I am familiar with the education loan records within my possession as custodian of records related to this matter. I have been authorized to make this certification on behalf of Plaintiff for this case.

6. I have reviewed the education loan records as business records described in this affidavit regarding account number xxxxx4836/001-001000. Per those records, no payments have been

made on the account. After all payments, credits and offsets have been applied, defendant **GREGORY WERNER** owes the principal sum of $14,952.06, together with accrued interest in the amount of $2,994.22, totaling the sum of $17,946.28 as of 12/02/2014. Attached hereto and incorporated as **Exhibit "A"** is a true copy of the underlying credit agreement/promissory note. Please Note: The Defendant's personal information on the agreement/promissory note has been partially redacted for security reasons. In the event the Defendant faxed the executed Credit Agreement/Promissory Note, per its terms they agreed their facsimile/electronic signature is deemed to be an original. Under applicable federal and state law, all copies of signatures executed via facsimile or electronic email are considered to be legal, binding agreement.

7. Based on the loan records, upon Defendant's request, and Plaintiff's approval, Defendant was granted two (2) separate forbearances. Annexed hereto as **Exhibit "B"** are Defendant's requests for the forbearances.

8. According to the loan records, Defendant was granted a forbearance from December 1, 2007 to May 31, 2008, and another from July 1, 2008 to December 30, 2008. Annexed hereto as **Exhibit "C"** is the Deferment/Forbearance Loan Detail.

9. Following the ending of the second forbearance, the loan was placed into repayment with the Defendant's first payment being due on February 3, 2009. Annexed hereto as **Exhibit "D"** is the Defendant's Repayment Schedule.

10. No payment was made by the Defendant on or before February 3, 2009 , nor were any payments made thereafter.

11. Upon review of the loan records, on or about March 10, 2006 Defendant was sent notification that Plaintiff is the owner of the loan in this action

12. I declare under the penalty of perjury under the laws of the forum state that the foregoing is true and correct to the best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NAUGHT.

[signature]
AFFIANT

Bradley Luke, Legal Compliance Manager
Transworld Systems, Inc.
5100 Peachtree Industrial Blvd.,
Norcross, GA 30071

STATE OF Georgia)

COUNTY OF Gwinnett)

Subscribed and sworn to (or affirmed) before me on this 2 day of December 2014 by proved to me on the basis of satisfactory evidence to be the person who appeared before me.

CHANDRA ALPHABET MY COMMISSION EXPIRES NOTARY PUBLIC FEBRUARY 28, 2015 DEKALB COUNTY, GEORGIA

[signature]
Chandra Alphabet

Exhibit "A"

From: 845 225 1858 Page: 2/4 Date: 1/11/2006 11:46:18 AM

001

* Cosigned * Loan Request/Credit Agreement – Signature Page

NON-NEGOTIABLE CREDIT AGREEMENT – THIS IS A CONSUMER CREDIT TRANSACTION

LOAN PROGRAM INFORMATION

Astrive Education Loan

Academic Period: 01/2006-05/2006 05/2010

Lender: Charter One Bank, N.A. School: WESTCHESTER COMMUNITY COLLEGE

Loan Amount Requested: $10000.00 Repayment Option: Full Deferral

Deferral Period Margin: 4.65 Repayment Period Margin: 4.65 Loan Origination Fee Percentage: 6.50

STUDENT BORROWER INFORMATION (Must be at least 18 years of age)

Borrower Name: Gregory P Werner Home Address: 9 Elmwood Dr Brewster, NY 10509
Social Security #: [redacted]4838 Date of Birth: 0[redacted]/1987 Home Telephone: [redacted]4735

Student Citizenship (check one box): ☒ U.S. Citizen ☐ Eligible Non-Citizen (Attach front & back copy of CIS or student visa card)
Note: Personal reference name and address cannot match that of the Cosigner.
Personal Reference Name: Alison Sanberg Reference Home Tel #: [redacted] Work Tel #:
Reference Street Address: [redacted]
Reference City/State/Zip: C[redacted]

COSIGNER INFORMATION (Must be at least 18 years of age)

Cosigner Name: Jo-ann S Werner Home Address: 9 Elmwood Dr Brewster, NY 10509
Social Security #: [redacted]8573 Date of Birth: [redacted]/1948 Home Telephone: [redacted]8136
Have you ever defaulted on a student loan or declared bankruptcy? ☒ No ☐ Yes
Current Employer: MT VERNON HOSPITAL Employer Telephone: [redacted]
Current Position: Professional Years There: 30 Years 11 Months
Years at Previous Employment:

Alimony, child support, or separate maintenance incomes do not have to be revealed if you do not want them considered for repaying this obligation. If you are relying on such additional income, please provide details on a separate sheet of paper.

Cosigner Citizenship (check one box): ☒ U.S. Citizen ☐ Eligible Non-Citizen (Attach front & back copy of CIS)
Note: Personal reference name and address cannot match that of the Student.
Personal Reference Name: Carol Lieberman Reference Home Tel #: [redacted] Work Tel #:
Reference Street Address: [redacted]
Reference City/State/Zip: [redacted]

By my signature, I certify that I have read, understand and agree to the terms of and undertake the obligations set forth on all five (5) pages of this Loan Request/Credit Agreement AB.05-06.CSX1.10DC.0205 ("Credit Agreement"). I understand that any person who knowingly makes a false statement or misrepresentation on this form is subject to penalties, which may include fines or imprisonment. This Credit Agreement is signed under seal. I understand that I am not required to fax my signature on or to sign electronically this Credit Agreement and any related notices that require signature. If I choose to fax my signature on or to sign electronically this Credit Agreement and any related notices that require signature, I intend: (i) my fax or electronic signature to be an electronic signature under applicable federal and state law, (ii) any fax printout or printout of Lender's electronic record of this Credit Agreement and related notices to be an original document, (iii) to conduct business with the Lender by electronic records and electronic signatures, and (iv) that this Credit Agreement will not be governed by Article 3 of the Uniform Commercial Code, and my obligations under this Credit Agreement will not be subject to, but any transfer of my obligations will be subject to, Article 9 of the Uniform Commercial Code.

FOR ALABAMA RESIDENTS: CAUTION – IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

FOR WISCONSIN RESIDENTS - NOTICE TO CUSTOMER: (a) DO NOT SIGN THIS CREDIT AGREEMENT BEFORE YOU READ THE WRITING ON THE FOLLOWING PAGES, EVEN IF OTHERWISE ADVISED.
(b) DO NOT SIGN THIS CREDIT AGREEMENT IF IT CONTAINS ANY BLANK SPACES.
(c) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.
(d) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE UNDER THIS CREDIT AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE.

PLEASE SIGN BELOW – RETURN This Page With Proof of Income and Other Information (if applicable) – FAX TO: 800-704-9408

Signature of Borrower Gregory P Werner Date 1-11-06

BY SIGNING THIS CREDIT AGREEMENT BELOW, I CERTIFY THAT I INTEND TO (i) APPLY FOR JOINT CREDIT AND (ii) BE JOINTLY LIABLE WITH THE BORROWER FOR THIS LOAN.

Signature of Cosigner [signature] Date 1-11-06

AB.05-06.CSX1.10DC.0205 LENDER COPY
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Ex A

In this Credit Agreement, the words "I", "me", "my", and "mine" mean the person(s) who signed this Credit Agreement as Borrower and Cosigner. The words "you", "your", "yours", and "Lender" mean Charter One Bank, N.A., its successors and assigns, and any other holder of this Credit Agreement. "School" means the school named at the top of the first page of this Credit Agreement. The "servicer" means the Lender or any entity it designates to service my loan.

A. PROMISE TO PAY: I promise to pay to you the principal sum of the Loan Amount Requested shown on the first page of this Credit Agreement, to the extent it is advanced to me or paid on my behalf, and any Loan Origination Fee added to my loan (see Paragraph F) ("Principal Sum"), interest on such Principal Sum, interest on any unpaid interest added to the Principal Sum and late fees (see Paragraph E.6).

B. IMPORTANT – READ THIS CAREFULLY:

1. When you receive my signed Credit Agreement, you are not agreeing to lend me money. If you decide to make a loan to me, you will electronically transfer the loan funds to the School for me, mail a loan check to the School for me, or mail a loan check directly to me. You have the right to not make a loan or to lend an amount less than the Loan Amount Requested. I agree to accept an amount less than the Loan Amount Requested and to repay that portion of the Loan Amount Requested that you actually lend to me. You have the right to disburse my loan through an agent. At your option, you may also make any loan check co-payable to me and the Cosigner or to me and the School.

2. HOW I AGREE TO THE TERMS OF THIS LOAN. By signing this Credit Agreement, and submitting it to the Lender, I am requesting that you make this loan to me in an amount equal to the Loan Amount Requested plus any Loan Origination Fee described in Paragraph F of this Credit Agreement. If you approve this request and agree to make this loan, you will notify me in writing and provide me with a Disclosure Statement, as required by law, at the time the loan proceeds are disbursed. The Disclosure Statement is incorporated herein by reference and made a part hereof. The Disclosure Statement will tell me the amount of the loan which you have approved, the amount of the Loan Origination Fee, and other important information. I will let you know that I agree to the terms of the loan as set forth in this Credit Agreement and in the Disclosure Statement by doing either of the following: (a) endorsing or depositing the check that disburses the loan proceeds; or (b) allowing the loan proceeds to be used by or on behalf of the Student without objection. Upon receipt of the Disclosure Statement, I will review the Disclosure Statement and notify you in writing if I have any questions. If I am not satisfied with the terms of my loan as disclosed in the Disclosure Statement, I may cancel my loan. To cancel my loan, I will give you a written cancellation notice within ten (10) days after I receive the Disclosure Statement. If loan proceeds have been disbursed, I agree that I will immediately return the loan proceeds to you, will not endorse any check which disburses the loan proceeds and will instruct the School to return any loan proceeds to you. If I give notice of cancellation but do not comply with the requirements of this Paragraph B.2, this Credit Agreement will not be canceled and I will be in default of this Credit Agreement. (See Paragraph I.)

C. DEFINITIONS:

1. "Disbursement Date" means the date or dates on which you lend money to me in consideration for my Credit Agreement and will be the date(s) shown on any loan check you prepare or the date(s) you initiate any electronic funds transfer.

2. The "Deferment Period" will begin on the Disbursement Date and end on the Deferment End Date.

3. "Deferment End Date" means the date specified below for the applicable loan program (the applicable loan program is stated on the first page of this Credit Agreement).

(a) ***Undergraduate Alternative Loan Program:*** If I have elected the "Immediate Repayment" option (the applicable repayment option is stated on the first page of this Credit Agreement), there is no Deferment Period, and my first payment will be 30-60 days after the disbursement of my loan. If I have elected the "Interest Only" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), then interest payments will begin 30-60 days after the disbursement of my loan, the "Deferment End Date" will be the date the Student graduates or ceases to be enrolled at least half-time in the School (or another school participating in this loan program), and principal and interest payments will begin 30-60 days after that date. In any event, if I have elected the "Interest Only" repayment option, the Deferment End Date will be no more than 5 years after the Disbursement Date. If I have elected the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), then the "Deferment End Date" will be 180 days after the Student graduates or ceases to be enrolled at least half-time in the School (or another school participating in this Loan Program). In any event, if I have elected the "Full Deferral" repayment option, the Deferment End Date will be no more than 5½ years after the Disbursement Date.

(b) ***Graduate Professional Education Loan Program:*** 180 days after the Student graduates or ceases for any other reason to be enrolled at least half-time in the School (or another school participating in this Loan Program), but no more than 4½ years after the Disbursement Date; provided, however, that if the Student begins a medical residency or internship during the Deferment Period, then the Deferment Period will end 180 days after the day the residency or internship ends, but no more than 8½ years after the Disbursement Date.

4. The "Repayment Period" begins the day after the Deferment Period ends. If there is no Deferment Period for my loan, the Repayment Period will begin when my loan is fully disbursed. The Repayment Period is 20 years unless monthly payments equal to the minimum monthly payment amount (See Paragraph E.2) will repay all amounts owed in less than 20 years, in which case the Repayment Period will be the number of months necessary to pay in full the amount I owe at the minimum payment.

D. INTEREST:

1. Accrual – Beginning on the Disbursement Date, interest will be calculated at the Variable Rate (Paragraph D.2) and charged on the Principal Sum, and on any unpaid interest later added to the Principal Sum according to Paragraph D.3. During the Repayment Period, interest will be calculated at the Variable Rate and charged on the outstanding balance of this Credit Agreement until all amounts are paid in full. Interest will be calculated on a daily simple interest basis. The daily interest rate will be equal to the annual interest rate in effect on that day, divided by the number of days in that calendar year.

2. Variable Rate – The "Variable Rate" is equal to the Current Index plus a Margin. The Margins for both the Deferment Period and the Repayment Period are shown on the first page of this Credit Agreement. In no event will the Variable Rate exceed the maximum interest rate allowed by the laws of the State of Ohio. The Variable Rate will change quarterly on the first day of each January, April, July and October (the "Change Date(s)") if the Current Index changes. The "Current Index" for any calendar quarter beginning on a Change Date (or for any shorter period beginning on the Disbursement Date and ending on the last day of a calendar quarter) is based on the one-month London Interbank Offered Rate ("LIBOR") as published in the "Money Rates" section of *The Wall Street Journal*. The index for each calendar quarter (or for any shorter period beginning on a Disbursement Date and ending on the last day of a calendar quarter) will equal the average of the LIBOR rates published on the first business day of each of the three (3) immediately preceding calendar months, rounded to the nearest one-hundredth percent (0.01%). If *The Wall Street Journal* is not published or the Current Index is not given on that date, then the Current Index will be determined by using the immediately preceding published Current Index. If the Current Index is no longer available, you will choose a comparable index.

3. Capitalization -- If I have elected the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), I am not obligated to make any payments until the loan enters the Repayment Period and you will add unpaid accrued interest to the principal loan balance as of the last day of each calendar quarter (the last day of December, March, June and September) during the Deferment Period and as of the last day of my Deferment Period. Interest that is added to principal is called "Capitalized" interest. Capitalized interest will be treated as principal. In addition, if I am in default (see Paragraph I) and the loan has been sold to TERI (see Paragraph L.12), TERI may capitalize accrued and unpaid interest as of the date it purchases my loan. I understand that you will also add all accrued and unpaid interest to the principal balance of my loan at the end of any forbearance period (see Paragraph H).

E. TERMS OF REPAYMENT:

1. Deferment Period -- If I have elected either the "Interest Only" repayment option or the "Full Deferral" repayment option (the applicable repayment option is stated on the first page of this Credit Agreement), you will send statements during the Deferment Period (showing the total outstanding principal balance of my loan and the interest that has accrued on my loan). You reserve the right to send statements or notices to either the Borrower or the Cosigner. Statements will be sent to me at the address shown on your records. If I have elected the "Interest Only" repayment option, I agree to make payments each month during the Deferment Period equal to the accrued interest on the outstanding balance of this Credit Agreement. If I have elected the "Full Deferral" repayment option I may, but am not required to make payments during the Deferment Period. You will add any interest that I do not pay during the Deferment Period to the principal balance, as described in Paragraph D.3.

2. Repayment Period – The amount of my monthly payment ("Monthly Payment Amount") will be established based on the rules in this Credit Agreement when my Repayment Period begins. During the Repayment Period, you will send me monthly statements that show the Monthly Payment Amount and the payment due dates, and I will pay the Monthly Payment Amount shown on my monthly statement, which amount will in no event be less than $25 or the unpaid balance, whichever is less. I understand that the Monthly Payment Amount is due each month. I may pay more than my Monthly Payment Amount at any time without penalty or charge. If my loan is in paid-ahead status, I may, but will not be required to make monthly payments. You reserve the right to send monthly statements to the Borrower and/or the Cosigner. Even if I do not receive monthly statements, I will make consecutive monthly payments in amounts at least equal to the Monthly Payment Amount by the applicable payment due dates until I have paid all of the principal and interest and any other charges I may owe under this Credit Agreement.

3. Repayment Terms - My Monthly Payment Amount will be calculated as of the day the Repayment Period begins ("Repayment Date"). It will be recalculated (a) once each year prior to the anniversary of the Repayment Date, (b) if the Variable Rate changes between anniversaries of the Repayment Date to the extent that the Monthly Payment Amount would not pay in full the accrued monthly interest on my loan, (c) following any subsequent deferment or forbearance period or (d) following any request by the Borrower to the servicer to change the monthly payment due date (each of which events is a new "Repayment Date"). As of any Repayment Date, my Monthly Payment Amount will be recalculated. My new Monthly Payment Amount will be disclosed to me by the servicer. The new Monthly Payment Amount will equal the amount necessary to pay in full, over the number of months remaining in the Repayment Period, the amount I owe in equal monthly installments of principal and

Interest at the Variable Rate in effect at the time of the calculation. I understand that this may result in a reduction or increase in my monthly payment as calculated as of each Repayment Date. I understand that during the Repayment Period (and, if I have elected the "Interest Only" repayment option, during the period of interest payments) the servicer may change the monthly payment due date of future payments to a later date for the convenience of the servicer in processing payments or in order to coordinate the due dates of all of my loans processed by the servicer.

4. Amounts Owing at the End of the Repayment Period – Since interest accrues daily upon the unpaid principal balance of my loan, if I make payments after my payment due dates, I may owe additional interest. If I have not paid my late fees, I will also owe additional amounts for those late fees. In such cases you will increase the amount of my last monthly payment to the amount necessary to repay my loan in full.

5. Payments – Payments will be applied first to late fees, other fees and charges, accrued interest, and the remainder to principal.

6. Other Charges - If any part of a monthly payment remains unpaid for a period of more than 15 days after the payment due date, I will pay a late fee not exceeding $5.00 or 5% of the overdue payment amount, whichever is less. To the extent permitted by law, I agree to pay you all amounts you incur in enforcing the terms of this Credit Agreement, including reasonable collection agency and attorney's fees and court costs and other collection costs.

F. LOAN ORIGINATION FEE: If you charge me, I will pay you a Loan Origination Fee at the time my loan is disbursed. The dollar amount of any Loan Origination Fee will be determined by multiplying the Principal Sum times the Loan Origination Fee Percentage shown on the first page of this Credit Agreement. The percentage would be higher if computed only on the amount advanced rather than on the entire Principal Sum (Loan Origination Fee plus the loan amount advanced). For example, a nominal Loan Origination Fee of 6.5% on the entire principal amount would equal 6.9519% of the amount advanced. The Loan Origination Fee I will pay, if any, will be shown on my Disclosure Statement and included with the Principal Sum. To the extent permitted by law, and unless I timely cancel this Credit Agreement (see Paragraph B.2), I will not be entitled to a refund of any Loan Origination Fee after my loan has been disbursed.

G. RIGHT TO PREPAY: I have the right to prepay all or any part of my loan at any time without penalty.

H. FORBEARANCE: If I am unable to repay my loan in accordance with the terms established under this Credit Agreement because of a hardship such as financial or medical difficulty, I may request that you modify these terms. I understand that such modification would be at your option. I understand that I will remain responsible for all interest accruing during any period of forbearance and that you will add any interest that I do not pay during any forbearance period to the principal balance, as described in Paragraph D.3.

I. WHOLE LOAN DUE: To the extent permitted by applicable law, I will be in default and you have the right to give me notice that the whole outstanding principal balance, accrued interest, and all other amounts payable to you under the terms of this Credit Agreement, are due and payable at once (subject to any applicable law which may give me a right to cure my default) if: (1) I fail to make any monthly payment to you when due, (2) I die, (3) I break any of my other promises in this Credit Agreement, (4) any bankruptcy proceeding is begun by or against me, or I assign any of my assets for the benefits of my creditors, or (5) I make any false written statement in applying for this loan or any other loan or at any time during the Deferment or Repayment Periods. If I default, I will be required to pay interest on this loan accruing after default. The interest rate after default will be subject to adjustment in the same manner as before default. Upon default, you may also capitalize any interest and fees (i.e., add accrued and unpaid interest and fees to the principal balance), and increase the Margin used to compute the Variable Rate by two percentage points (2%).

J. NOTICES:

1. I will send written notice to you, any subsequent holder of this Credit Agreement, and the servicer within ten days after any change in name, address, or enrollment status (for example, if the Borrower withdraws from the School or transfers to another school participating in this loan program).

2. Any notice required to be given to me by you will be effective when mailed by first class mail to the latest address you have for me. Unless required by applicable law, you need not give a separate notice to the Cosigner, if any.

K. INFORMATION:

1. I must update the information I provided to you whenever you ask me to do so.

2. I authorize you from time to time to request and receive from others credit related information about me (and about my spouse if I live in a community property state).

3. CREDIT BUREAU REPORTING

You may report information about my account to credit bureaus. Late payments, missed payments, or other defaults in my account may be reflected in my credit report.

I understand that the reporting of information about my account to credit bureaus may adversely affect my credit rating and my ability to obtain other credit. You may also report the status of my loan and my payment history, including information about a late payment, missed payment or other defaults, to the School and others in accordance with applicable law.

L. ADDITIONAL AGREEMENTS:

1. I understand that you are located in Ohio and that this Credit Agreement will be entered into in the same state. CONSEQUENTLY, THE PROVISIONS OF THIS CREDIT AGREEMENT WILL BE GOVERNED BY FEDERAL LAW AND THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO CONFLICT OF LAW RULES.

2. The proceeds of this loan will be used only for my educational expenses at the School. The Cosigner, if any, will not receive any of the loan proceeds.

3. My responsibility for paying the loan evidenced by this Credit Agreement is unaffected by the liability of any other person to me or by your failure to notify me that a required payment has not been made. Without losing any of your rights under this Credit Agreement you may accept (a) late payments, (b) partial payments or (c) payments marked "paid in full" or with other restrictions. You may delay, fail to exercise, or waive any of your rights on any occasion without losing your entitlement to exercise the right at any future time, or on any future occasion. You will not be obligated to make any demand upon me, send me any notice, present this Credit Agreement to me for payment or make protest of non-payment to me before suing to collect on this Credit Agreement if I am in default, and to the extent permitted by applicable law, I hereby waive any right I might otherwise have to require such actions. I WILL NOT SEND YOU PAYMENTS MARKED "PAID IN FULL", "WITHOUT RECOURSE" OR WITH OTHER SIMILAR LANGUAGE UNLESS THOSE PAYMENTS ARE MARKED FOR SPECIAL HANDLING AND SENT TO THE ADDRESS IDENTIFIED FOR SUCH PAYMENTS ON MY BILLING STATEMENT, OR TO SUCH OTHER ADDRESS AS I MAY BE GIVEN IN THE FUTURE.

4. I may not assign this Credit Agreement or any of its benefits or obligations. You may assign this Credit Agreement at any time.

5. The terms and conditions set forth in this Credit Agreement and Instructions and the Disclosure Statement constitute the entire agreement between you and me.

6. If any provision of this Credit Agreement is held invalid or unenforceable, that provision shall be considered omitted from this Credit Agreement without affecting the validity or enforceability of the remainder of this Credit Agreement.

7. A provision of this Credit Agreement may only be modified if jointly agreed upon in writing by you and me. Any modification will not affect the validity or enforceability of the remainder of this Credit Agreement.

8. To the extent permitted by law, you have the right to apply money from any of my deposit account(s) with you to pay all or a portion of any amount overdue under this Credit Agreement. I hereby authorize you to obtain from the School all amounts which may be owed to me by the School, including any refund due to overpayment, early termination of enrollment, or otherwise.

9. If this Credit Agreement is executed by more than one Borrower, each Borrower agrees that any communication between you and any of the Borrowers will be binding on all of the Borrowers. I intend to be treated as a principal of this Credit Agreement and not as a surety. To the extent I may be treated as a surety, I waive all notices to which I might otherwise be entitled as such by law, and all suretyship defenses that might be available to me (including, without limitation, contribution, subrogation and exoneration). I agree that the Borrower may agree to any forbearance or other modification of the repayment schedule and that such agreement will be binding on me. It shall not be necessary for you to resort to or exhaust your remedies against the borrower before calling upon me to make repayment. For purposes of this paragraph only, "I" and "me" refer to the Cosigner only.

10. All dollar amounts stated in this Credit Agreement are in United States dollars. I will make all payments in United States Dollars with no deduction for currency exchange.

11. If the Student fails to complete the education program paid for with this loan, the Cosigner and I are not relieved of any obligation within or pursuant to this Credit Agreement.

12. I acknowledge that the requested loan is subject to the limitations on dischargeability in bankruptcy contained in Section 523 (a) (8) of the United States Bankruptcy Code. Specifically, I understand that you have purchased a guaranty of this loan, and that this loan is guaranteed by The Education Resources Institute, Inc. ("TERI"), a non-profit institution.

13. I authorize any school that I may attend to release to you, and any other persons designated by you, any requested information pertinent to this loan (e.g., enrollment status, prior loan history, and current address).

14. I authorize the Lender, any subsequent holder of this Credit Agreement, and their agents to: (1) advise the School of the status of my application and my loan, (2) respond to inquiries from prior or subsequent lenders or holders with respect to my Credit Agreement and related documents, (3) release information and make inquiries to the persons I have given you as references, for the purposes of learning my current address and telephone number, (4) check my credit and employment history and to answer questions about their credit experience with me, and (5) disclose to TERI, the Borrower, and/or the Cosigner either in connection with this transaction or any future transaction all information (including status information and non-public personal information) of the Borrower and/or the Cosigner provided in connection with this Credit Agreement. If in the future I apply for a loan that is guaranteed by TERI and funded by another lender, I also authorize the sharing of application information for this loan (other than information in a consumer report) with the other lender and TERI and the reuse of such information by such new lender and TERI in my new application.

15. Waiver by Lender. You waive (give up) any right to claim a security interest in any property to secure this Credit Agreement. This does not affect any right to offset as a matter of law.

16. If I fax my signature(s) on the first page of this Credit Agreement back to you and keep the copy I signed, I understand that under federal law the fax you receive will be an original of the first page of this Credit Agreement. You and I agree that all copies of

this Credit Agreement (including the fax you receive and the copy I retain), taken together, shall constitute a single original agreement.

17. If any Borrower or Cosigner elects to sign electronically an electronic record of this Credit Agreement, then the following will apply as between Lender and such person: (a) Lender will keep a non-modifiable electronic record of this document and provide a copy to me upon request, (b) I can and have downloaded and/or printed a copy of this document for my records or notified the Lender to mail me a copy of this document, and (c) the Lender's electronic record of this document and any printout from that record shall be an original for all purposes, including any lawsuit to collect amounts that I owe. If I physically sign a copy of this document that has been electronically signed by any other Cosigner or Borrower, as between me and the Lender the copy I sign (and any fax of that copy I may send to Lender) will be an original. However, the electronic signature of another party to this Credit Agreement and the Lender's electronic record of this document containing that signature will be as valid against me as an original, physical document that is physically signed by all parties.

M. DISCLOSURE NOTICES

ALL APPLICANTS:
IMPORTANT FEDERAL LAW NOTICE—

Important information about procedures for opening a new account:
To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you:
When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

CALIFORNIA RESIDENTS: I have the right to prohibit the use of information contained in my credit file in connection with transactions not initiated by me. I may exercise this right by notifying the consumer credit reporting agency. A married applicant may apply for a separate account. If you take any adverse action as defined by Section 1785.3 of the California Civil Code and the adverse action is based, in whole or in part, on any information contained in a consumer credit report, I have the right to obtain within 60 days a free copy of my consumer credit report from the consumer reporting agency who furnished you my consumer credit report and from any other consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis. I have the right as described by Section 1785.16 of the California Civil Code to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer credit reporting agency.

CALIFORNIA AND UTAH RESIDENTS: As required by California and Utah law, I am hereby notified that a negative credit report reflecting on my credit record may be submitted to a credit reporting agency if I fail to fulfill the terms of my credit obligations.

IOWA, KANSAS AND NEBRASKA RESIDENTS (For purposes of the following notice, the word "you" refers to the Borrower and the Cosigner, not the Lender): NOTICE TO CONSUMER. This is a consumer credit transaction. 1. DO NOT SIGN THIS CREDIT AGREEMENT BEFORE YOU READ THIS CREDIT AGREEMENT. 2. YOU ARE ENTITLED TO A COPY OF THIS CREDIT AGREEMENT. 3. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY AND MAY BE ENTITLED TO A REFUND OF UNEARNED CHARGES IN ACCORDANCE WITH LAW.

MARYLAND RESIDENTS: In Paragraph L.1, Lender and I have agreed that this Credit Agreement is governed by federal law and the laws of OHIO, without regard to conflict of laws rules; if any court should nevertheless determine that this Credit Agreement is subject to Maryland laws concerning credit, then only to the extent that Maryland law applies, Lender and I agree and elect that this loan is made under and governed by Subtitle 10, Credit Grantor Closed End Credit Provisions, of Title 12 of the Commercial Law Article of the Annotated Code of Maryland, except as preempted by federal law.

MISSOURI RESIDENTS: Oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect me (borrower(s)) and you (creditor) from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

NEVADA RESIDENTS: This is a loan for study.

NEW JERSEY RESIDENTS: The section headings of this Credit Agreement are a table of contents and not contract terms. Portions of this Credit Agreement with references to actions taken to the extent of applicable law apply to acts or practices that New Jersey law permits or requires. In this Credit Agreement, acts or practices (i) by you which are or may be permitted by "applicable law" are permitted by New Jersey law, and (ii) that may or will be taken by you unless prohibited by "applicable law" are permitted by New Jersey law.

NEW YORK, RHODE ISLAND AND VERMONT RESIDENTS: A consumer report (credit report) may be obtained from a consumer-reporting agency (credit bureau) in connection with this loan. If I request (1) I will be informed whether or not consumer reports were obtained, and (2) if reports were obtained, I will be informed of the names and addresses of the credit bureaus that furnished the reports. If you agree to make this loan to me, a consumer credit report may be requested or used in connection with renewals or extensions of any credit for which I have applied, reviewing my loan, taking collection action on my loan, or legitimate purposes associated with my loan.

OHIO RESIDENTS: The Ohio laws against discrimination require that all creditors make credit equally available to all credit worthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

WISCONSIN RESIDENTS: For married Wisconsin residents, my signature on this Credit Agreement confirms that this loan obligation is being incurred in the interest of my marriage or family. No provision of any marital property agreement (pre-marital agreement), unilateral statement under Section 766.59 or court decree under Section 766.70 adversely affects the interest of the Lender unless the Lender, prior to the time that the loan is approved, is furnished with a copy of the agreement, statement, or decree or has actual knowledge of the adverse provision when the obligation to the Lender is incurred. If the loan for which I am applying is granted, my spouse will also receive notification that credit has been extended to me.

N. BORROWER'S CERTIFICATION: I declare under penalty of perjury under the laws of the United States of America that the following is true and correct. I certify that all information I provided to you in connection with this loan, including without limitation, the information contained in this Credit Agreement, is true, complete and correct to the best of my knowledge and belief and is made in good faith. I understand that I am responsible for repaying immediately any funds that I receive which are not to be used or are not used for educational expenses related to attendance at the School for the academic period stated. I certify that I am not now in default on a Federal Perkins Loan, a Federal Stafford Loan, a Federally Insured Student Loan, a Federal Supplemental Loan for Students (SLS), a Federal PLUS Loan, an Income Contingent Loan, a Federal Consolidation Loan, a Federal Ford Direct Loan, or any other education loan received for attendance at any school.

O. STATE-SPECIFIC COSIGNER NOTICES: For the purposes of the following notices only, the words "you" and "your" refer to the Cosigner, where applicable, not to the lender.

FOR OBLIGORS COSIGNING IN WEST VIRGINIA:

NOTICE TO COSIGNER
You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility. You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount. The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record. This notice is not the contract that makes you liable for the debt.

FOR OBLIGORS COSIGNING IN IOWA, NEW YORK AND SOUTH CAROLINA:

NOTICE: You agree to pay the debt identified below although you may not personally receive any property, goods, services, or money. You may be sued for payment although the person who receives the property, goods, services, or money is able to pay. You should know that the Total of Payments listed below does not include finance charges resulting from delinquency, late charges, repossession or foreclosure costs, court costs or attorney's fees, or other charges that may be stated in the Credit Agreement or contract. You will also have to pay some or all of these costs and charges if the Credit Agreement or contract, the payment of which you are guaranteeing requires the borrower to pay such costs and charges. This notice is not the Credit Agreement or contract that obligates you to pay the debt. Read the Credit Agreement or contract for the exact terms of your obligation.

IDENTIFICATION OF DEBT (S) YOU MAY HAVE TO PAY
Name of Debtor: The Borrower and Cosigner identified on the first page of this Credit Agreement.
Name of Creditor: Charter One Bank, N.A., and its successors and assigns.
Date: If the loan is disbursed by check, the date of the check. If the loan is disbursed electronically, the date the creditor transmits the funds to the School.
Kind of Debt: Education loan.
Total of Payments: The Loan Amount Requested set forth on the first page of this Credit Agreement (to the extent advanced), plus interest and the Loan Origination Fee set forth in this Credit Agreement.

FOR OBLIGORS COSIGNING IN VERMONT:

NOTICE TO COSIGNER

YOUR SIGNATURE ON THIS CREDIT AGREEMENT MEANS THAT YOU ARE EQUALLY LIABLE FOR REPAYMENT OF THIS LOAN. IF THE BORROWER DOES NOT PAY, THE LENDER HAS A LEGAL RIGHT TO COLLECT FROM YOU.

FEDERAL AND CALIFORNIA COSIGNER NOTICES

For the purposes of these Notices, the words "you" and "your" refer to the Cosigner, not the Lender.

NOTICE TO COSIGNER (Traduccion en Ingles Se Requiere Por La Ley):
You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The holder of the loan can collect this debt from you without first trying to collect from the borrower. The holder of the loan can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become part of your credit record.

This notice is not the contract that makes you liable for the debt.

AVISO PARA EL FIADOR (Spanish Translation Required by Law):
Se le está pidiendo que garantice esta deuda. Piénselo con cuidado antes de ponerse de acuerdo. Si la persona que ha pedido este préstamo no paga la deuda, usted tendrá que pagarla. Esté seguro de que usted podrá pagar si sea obligado a pagarla y de que usted desea aceptar la responsabilidad.

Si la persona que ha pedido el préstamo no paga la deuda, es posible que usted tenga que pagar la suma total de la deuda, mas los cargos por tardarse en el pago o el costo de cobranza, lo cual aumenta el total de esta suma.

El acreedor (financiero) puede cobrarle a usted sin, primeramente, tratar de cobrarle al deudor. Los mismos metodos de cobranza que pueden usarse contra el deudor, podran usarse contra usted, tales como presentar una demanda en corte, quitar parte de su sueldo, etc. Si alguna vez no se cumpla con la obligación de pagar esta deuda, se puede incluir esa información en la historia de credito de usted.

Este aviso no es el contrato mismo en que se le echa a usted la responsibilidad de la deuda.

NOTE DISCLOSURE STATEMENT

$ 10,928.96
03586720
Loan No.

Borrower(s) GREGORY P WERNER
JO-ANN S WERNER

Student: GREGORY P WERNER
Date: January 17, 2006

GREGORY P WERNER
P.O. BOX 1318
CARMEL, NY 10512

Lender Name and Address:
CHARTER ONE BANK, N.A.
833 BROADWAY
ALBANY NY 12207

This disclosure statement relates to your Loan Note disbursed on January 17, 2006
Because your Loan is either being disbursed or entering repayment, or the repayment terms are being modified, the following information about your Loan is being given to you.

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments scheduled.
9.854 %	$ 14,888.00	$ 10,000.00	$ 24,888.00

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments are due
240	$ 103.70	On the 18th day of each month beginning on 12/2006

VARIABLE RATE: The Annual Percentage Rate, which is based on an index plus a margin, may increase during the term of the loan if the index rate increases. The index is (check one):

☐ **Prime Rate Index Adjusted Monthly** - The highest U.S. bank prime rate published in the "Money Rates" section of The Wall Street Journal on the last business day of each calendar month.

☐ **Prime Rate Index Adjusted Quarterly** - The highest U.S. bank prime rate published in the "Money Rates" section of The Wall Street Journal on the last business day of each calendar quarter.

☒ **LIBOR Index Adjusted Quarterly** - The average of the one-month London Interbank Offered Rates published in the "Money Rates" section of The Wall Street Journal on the first business day of each of the three (3) calendar months immediately preceding the first day of each calendar quarter.

Any increase in the index and the Annual Percentage Rate which occurs while principal payments are deferred will increase the amount of any current and all future payments. Any increase in the index and the Annual Percentage Rate which occurs while principal and interest payments are deferred will increase the amount of all future payments. Any increase in the index and the Annual Percentage Rate which occurs after you have begun to make principal and interest payments on your loan will increase the amount of your future principal and interest payments beginning with your next annual payment adjustment date. For example, assume you obtain a loan in your junior year, in the amount of $10,000, at an interest rate of 11%, and you defer principal and interest payments until after your graduation, and the repayment term of the loan is 20 years. If the interest rate increased to 12% on January 1st of your senior year, the interest which accrues while principal and interest payments are deferred will increase by $ 91.01, and your monthly principal and interest payments would increase by $ 9.37.

SECURITY: You have given a security interest in all refunds or amounts owed to you at any time by the student's educational institution. Collateral securing other loans with the Lender may also secure this Loan.
LATE CHARGES: If a payment is more than 15 days late, you may be charged $5.00 or 5% of the payment, whichever is less. If you default, Lender (or any subsequent holder or any subsequent holder of your Loan-Note) may increase the margin used to compute the Annual Percentage Rate by two percentage points (2%).
PREPAYMENT: If you pay off early, you will not have to pay a penalty.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, any security interest and prepayment refunds and penalties.

Estimates: All numerical disclosures except the late payment disclosure are estimates.

Principal Amount of Note (Amount Financed plus Prepaid Finance Charge) $ 10,928.96

Itemization of Amount Financed
Amount paid to GREGORY P WERNER and $
Amount paid to JO-ANN S WERNER $ 10,000.00
Total Amount Financed $ 10,000.00

Itemization of Prepaid Finance Charge
Origination Fee $ 928.96
Total Prepaid Finance Charge(s) $ 928.96

TRADEMARK 81 AVTTDP Astrive Education Loan File Copy

Exhibit "B"

(Page 1 of 3)

03/03/2008 12:55 15084356248 ASSOCIATED CREDIT SV PAGE 01
Mar 02 08 11:02a Greg Werner 8452798136 p.1
02/29/2008 12:23 15084356248 ASSOCIATED CREDIT SV PAGE 02

SC-TFB1-PS 12/04

THE EDUCATION RESOURCES INSTITUTE

Alternative Repayment Option Form

BORROWER ACCOUNT NUMBER [redacted] 0608
BORROWER NAME Gregory P Werner
ADDRESS 9 Elmwood St
CITY Brewster STATE NY ZIP CODE 10509
TELEPHONE NUMBER ([redacted]) [redacted] 4735
ALTERNATE TELEPHONE NUMBER (___) ___ - N/A
WORK TELEPHONE NUMBER (___) ___ - N/A
EMAIL ADDRESS [redacted] 4737@MSN.COM

Section 1:
If your financial situation is making it hard to make timely payments on your TERI guaranteed education loan(s), you may want to consider a MODIFIED GRADUATED REPAYMENT SCHEDULE (MGRS). This schedule offers:

- 12 months of payments at 50% of the regular monthly principal and interest payment amount.
- 12 months of interest only payments equaling 31 days of interest.
- A return to full principal and interest payments for the balance of your loan period. These payments may be higher than your previous monthly payments due to the 24 months of reduced payments listed above.

___ Yes, I would like to apply for the MGRS (If you are applying for the MGRS, you may skip Section 2 and go to section 3.)

X No, I am unable to make at least 50% of my regular monthly payment for the following reasons: disability, financial difficulties

Section 2:
If your financial difficulties prevent you from making timely payments under a Modified Graduated Repayment Schedule (MGRS) on your TERI guaranteed loan(s), you may be eligible for a Forbearance. Forbearance is granted at the owner's discretion for a few months as an alternative to regular monthly payments. The Forbearance is normally granted in increments of one to six months, with a maximum of twelve months during the life of the loan. The Forbearance period may be backdated to cover periods of delinquency, if any exist. However, any negative reports that were submitted to credit bureaus will not be removed if the Forbearance is granted retroactively.

X Yes, I hereby request a Forbearance for (all) of my private loans guaranteed by The Educational Resources Institute (TERI). If the Forbearance is being requested for specific loans, please list the first disbursement dates of each: ___

Number of months you are requesting Forbearance: 6 months

PDCN 1102008063000053

Ex B

Section 3:
You must continue making your regular monthly payments until the Forbearance or MGRS has been approved. You will receive written notice of the approval or denial of this request, after it has been processed.

I certify that I am unable to make payments according to the present terms of my loan(s). I understand that accrued and unpaid interest will be capitalized at the expiration of the MGRS or Forbearance period, and included in a new repayment schedule. This new repayment schedule will decrease my repayment period and increase my monthly payment amount.

I understand this request and all supporting documentation will remain the property of the lender, its agent, and/or TERI. The owner reserves the right to obtain a copy of my credit report. Additional debt incurred or preferential payments to other creditors could result in the denial or termination of my forbearance request. I understand that should my situation under which I applied for Forbearance change, I must immediately notify ABS Graduate and Professional Services. The above information is true and correct to the best of my knowledge. I understand that misrepresentation may lead to the denial of my request. I have read and understand and agree to the terms of this request. If I selected MGRS, I understand that I have agreed to amend the repayment terms of the original promissory note for my private loans guaranteed by TERI.

Borrower Signature *[signature]* Date 2/7/08

SELECT EITHER MGRS OR ECONOMIC HARDSHIP FORBEARANCE, BUT NOT BOTH

ALL ITEMS MUST BE COMPLETED OR INDICATE "N/A", ANY INCOMPLETE ITEM WILL BE CAUSE FOR DENIAL

THIS SECTION MUST BE COMPLETED FOR ACCOUNTS WITH CO-BORROWER(S)

1st CO-BORROWER Jo-Ann Werner TELEPHONE NUMBER [redacted] 4734
ACCOUNT NUMBER [redacted] 79608 ALTERNATE PHONE NUMBER ( ) N/A
ADDRESS 96 Edward Dr EMPLOYER NAME Mount Vernon Hospital
CITY Brewster STATE NY ZIP 10509 EMPLOYER TELEPHONE NUMBER [redacted] 8000
EMAIL ADDRESS N/A

2nd CO-BORROWER N/A TELEPHONE NUMBER ( ) N/A
ACCOUNT NUMBER N/A ALTERNATE PHONE NUMBER ( ) N/A
ADDRESS N/A EMPLOYER NAME N/A
CITY N/A STATE N/A ZIP N/A EMPLOYER TELEPHONE NUMBER ( ) N/A
EMAIL ADDRESS N/A

(Page 3 of 3)

03/03/2008 12:55 15084356248 ASSOCIATED CREDIT SV PAGE 03
Mar 02 08 11:02a Greg Werner 8452798136 p.3
02/21/2008 12:23 15084356248 ASSOCIATED CREDIT SV PAGE 04

SC-TFB2-PS 12/04

DETAILED LIST OF REVENUE AND EXPENSE

	TYPE OF MONTHLY INCOME	AMOUNT
1	Net Employment Income	[redacted]
2	Net Self-Employment	[redacted]
3	Investments (interest, dividends, rental income, etc)	[redacted]
4	Non-Taxable Income	[redacted]
5	Other:	[redacted]
6	Total (add items 1 through 5)	[redacted]

	TYPE OF MONTHLY EXPENSE	AMOUNT
1	Rent/Mortgage, Homeowner/Condominium Fees	[redacted]
2	Food	[redacted]
3	Utilities	[redacted]
4	Household Expenses	[redacted]
5	Clothing	[redacted]
6	Medical/Dental (non-reimbursable)	[redacted]
7	Insurance Premiums	[redacted]
8	Automobile Loan Payments	[redacted]
9	Transportation Expenses	[redacted]
10	Student Loan Payments Name of Creditor — Monthly Payments Total (for item 10.) (if additional space is needed, please attach a separate sheet of paper)	[redacted]
11	Credit Card Payments Name of Creditor — Monthly Payments Total (for item 11.) (if additional space is needed, please attach a separate sheet of paper)	[redacted]
12	Other Ordinary and Necessary Living Expenses	[redacted]
13	TOTAL (for items 1. through 12.)	[redacted]

Please return completed form to:
AES • P.O. Box 2461 • Harrisburg, PA 17105-2461
Fax:
[illegible]

(Page 1 of 3)

03/17/2008 14:47 15084356248 ASSOCIATED CREDIT SV PAGE 01
Mar 05 08 09:29p Greg Werner 8452798136 p.1
02/21/2008 12:23 15084356248 ASSOCIATED CREDIT SV PAGE 02

SC-TEBI-FS 12/04 03/03/08 #[redacted]3609

THE EDUCATION RESOURCES INSTITUTE

Alternative Repayment Option Form

BORROWER ACCOUNT NUMBER [redacted]06108
BORROWER NAME Gregory P. Werner
ADDRESS 9 Elmwood Dr
CITY Brewster STATE NY ZIP CODE 10509
TELEPHONE NUMBER ([redacted]) [redacted] 4735
ALTERNATE TELEPHONE NUMBER (____) ____ - N/A
WORK TELEPHONE NUMBER (___) ____ - N/A
EMAIL ADDRESS [redacted]1427 @ MSN.COM

Section 1:
If your financial situation is making it hard to make timely payments on your TERI guaranteed education loan(s), you may want to consider a MODIFIED GRADUATED REPAYMENT SCHEDULE (MGRS). This schedule offers:

- 12 months of payments at 50% of the regular monthly principal and interest payment amount.
- 12 months of interest only payments equaling 31 days of interest.
- A return to full principal and interest payments for the balance of your loan period. These payments may be higher than your previous monthly payments due to the 24 months of reduced payments listed above.

____ Yes, I would like to apply for the MGRS (If you are applying for the MGRS, you may skip Section 2 and go to section 3.

X No, I am unable to make at least 50% of my regular monthly payment for the following reasons: disability, financial difficulties

Section 2:
If your financial difficulties prevent you from making timely payments under a Modified Graduated Repayment Schedule (MGRS) on your TERI guaranteed loan(s), you may be eligible for a Forbearance. Forbearance is granted at the owner's discretion for a few months as an alternative to regular monthly payments. The Forbearance is normally granted in increments of one to six months, with a maximum of twelve months during the life of the loan. The Forbearance period may be backdated to cover periods of delinquency, if any exist. However, any negative reports that were submitted to credit bureaus will not be removed if the Forbearance is granted retroactively.

X Yes, I hereby request a Forbearance for (all) of my private loans guaranteed by The Educational Resources Institute (TERI). If the Forbearance is being requested for specific loans, please list the first disbursement dates of each: __________

Number of months you are requesting Forbearance: 6 months

Section 3:

You must continue making your regular monthly payments until the Forbearance or MGRS has been approved. You will receive written notice of the approval or denial of this request, after it has been processed.

I certify that I am unable to make payments according to the present terms of my loan(s). I understand that accrued and unpaid interest will be capitalized at the expiration of the MGRS or Forbearance period, and included in a new repayment schedule. This new repayment schedule will decrease my repayment period and increase my monthly payment amount.

I understand this request and all supporting documentation will remain the property of the lender, its agent, and/or TERI. The owner reserves the right to obtain a copy of my credit report. Additional debt incurred or preferential payments to other creditors could result in the denial or termination of my forbearance request. I understand that should my situation under which I applied for Forbearance change, I must immediately notify AES Graduate and Professional Services. The above information is true and correct to the best of my knowledge. I understand that misrepresentation may lead to the denial of my request. I have read and understand and agree to the terms of this request. If I selected MGRS, I understand that I have agreed to amend the repayment terms of the original promissory note for my private loans guaranteed by TERI.

Borrower Signature [signature] Date 2/21/08

SELECT EITHER MGRS OR ECONOMIC HARDSHIP FORBEARANCE, BUT NOT BOTH

ALL ITEMS MUST BE COMPLETED OR INDICATE "N/A", ANY INCOMPLETE ITEM WILL BE CAUSE FOR DENIAL.

THIS SECTION MUST BE COMPLETED FOR ACCOUNTS WITH CO-BORROWERS!

1st CO-BORROWER Jo Ann Werner TELEPHONE NUMBER [redacted] 4734

ACCOUNT NUMBER [redacted] 9608 ALTERNATE PHONE NUMBER ( ) N/A

ADDRESS 9 Elmwood St EMPLOYER NAME Mount Vernon Hospital

CITY Brewster STATE NY ZIP 10509 EMPLOYER TELEPHONE NUMBER [redacted] 8000

EMAIL ADDRESS N/A

2nd CO-BORROWER Richard Werner TELEPHONE NUMBER ([redacted] -8136

ACCOUNT NUMBER [redacted] 79608 ALTERNATE PHONE NUMBER ( ) N/A

ADDRESS 9 Elmwood St EMPLOYER NAME N/A

CITY Brewster STATE NY ZIP 10509 EMPLOYER TELEPHONE NUMBER ( ) N/A

EMAIL ADDRESS N/A

SC-TFB2-PS 12/04

DETAILED LIST OF REVENUE AND EXPENSE

	TYPE OF MONTHLY INCOME	AMOUNT
1	Net Employment Income	[redacted]
2	Net Self-Employment	[redacted]
3	Investments (interest, dividends, rental income, etc)	[redacted]
4	Non-Taxable Income	[redacted]
5	Other:	[redacted]
6	Total (add items 1 through 5)	[redacted]

	TYPE OF MONTHLY EXPENSE	AMOUNT
1	Rent/Mortgage, Homeowner/Condominium Fees	[redacted]
2	Food	[redacted]
3	Utilities	[redacted]
4	Household Expenses	[redacted]
5	Clothing	[redacted]
6	Medical/Dental (non-reimbursable)	[redacted]
7	Insurance Premiums	[redacted]
8	Automobile Loan Payments	[redacted]
9	Transportation Expenses	[redacted]
10	Student Loan Payments Name of Creditor — Monthly Payments Total (for item 10.) (If additional space is needed, please attach a separate sheet of paper)	
11	Credit Card Payments Name of Creditor: CCs — Monthly Payments: [redacted] Total (for item 11.) (If additional space is needed, please attach a separate sheet of paper)	[redacted]
12	Other Ordinary and Necessary Living Expenses	[redacted]
13	TOTAL (for items 1. through 12.)	[redacted]

Please return completed form to:
ARS • P.O. Box 2461 • Harrisburg, PA 17105-2461
Fax:
717-720-2774 or 717-720-3931

(Page 1 of 4)

AES/PHEAA 10/24/2008 11:12:28 AM PAGE 1/004 Fax Server

FROM (WED)OCT 22 2008 10:28/ST. 10:28/No. 7520420081 P 1

10/22/08 LM

SC-TFB1-PS 11/04

A 5TH AttempT to submit paperwork A

THE EDUCATION RESOURCES INSTITUTE

Alternative Repayment Option Form

BORROWER ACCOUNT NUMBER [redacted] 4836

BORROWER NAME Greg Wernas

ADDRESS 4 Elkwood drive

CITY Brewster STATE NY ZIP CODE 10509

TELEPHONE NUMBER ([redacted]) [redacted]-4735

ALTERNATE TELEPHONE NUMBER ( ) -

WORK TELEPHONE NUMBER ( ) -

EMAIL ADDRESS

Section 1:
If your financial situation is making it hard to make timely payments on your TERI guaranteed education loan(s), you may want to consider a MODIFIED GRADUATED REPAYMENT SCHEDULE (MGRS). This schedule offers:

- 12 months of payments at 50% of the regular monthly principal and interest payment amount.
- 12 months of interest only payments equaling 31 days of interest.
- A return to full principal and interest payments for the balance of your loan period.
  These payments may be higher than your previous monthly payments due to the 24 months of reduced payments listed above.

___ Yes, I would like to apply for the MGRS (If you are applying for the MGRS, you may skip Section 2 and go to section 3.

___ No, I am unable to make at least 50% of my regular monthly payment for the following reasons:

N/A

Section 2:
If your financial difficulties prevent you from making timely payments under a Modified Graduated Repayment Schedule (MGRS) on your TERI guaranteed loan(s), you may be eligible for a Forbearance. Forbearance is granted at the owner's discretion for a few months as an alternative to regular monthly payments. The Forbearance is normally granted in increments of one to six months, with a maximum of twelve months during the life of the loan. The Forbearance period may be backdated to cover periods of delinquency, if any exist. However, any negative reports that were submitted to credit bureaus will not be removed if the Forbearance is granted retroactively.

X Yes, I hereby request a Forbearance for all of my private loans guaranteed by The Educational Resources Institute (TERI). If the Forbearance is being requested for specific loans, please list the first disbursement dates of each:

Number of months you are requesting Forbearance: 6

Section 3:

You must continue making your regular monthly payments until the Forbearance or MGRS has been approved. You will receive written notice of the approval or denial of this request, after it has been processed.

I certify that I am unable to make payments according to the present terms of my loan(s). I understand that accrued and unpaid interest will be capitalized at the expiration of the MGRS or Forbearance period, and included in a new repayment schedule. This new repayment schedule will decrease my repayment period and increase my monthly payment amount.

I understand this request and all supporting documentation will remain the property of the lender, its agent, and/or TERI. The owner reserves the right to obtain a copy of my credit report. Additional debt incurred or preferential payments to other creditors could result in the denial or termination of my Forbearance request. I understand that should my situation under which I applied for Forbearance change, I must immediately notify AES Graduate and Professional Services. The above information is true and correct to the best of my knowledge. I understand that misrepresentation may lead to the denial of my request. I have read and understand and agree to the terms of this request. If I selected MGRS, I understand that I have agreed to amend the repayment terms of the original promissory note for my private loans guaranteed by TERI.

Borrower Signature [signature] Date 9-20-08

SELECT EITHER MGRS OR ECONOMIC HARDSHIP FORBEARANCE, BUT NOT BOTH

ALL ITEMS MUST BE COMPLETED OR INDICATE "N/A", ANY INCOMPLETE ITEM WILL BE CAUSE FOR DENIAL

THIS SECTION MUST BE COMPLETED FOR ACCOUNTS WITH CO-BORROWERS!

1st CO-BORROWER Jo-Ann Weism TELEPHONE NUMBER [redacted]735
ACCOUNT NUMBER ______ ALTERNATE PHONE NUMBER (—)
ADDRESS 1 Elmwood ct ______ EMPLOYER NAME Mt Vernon Hosp
CITY E. [illegible] STATE NY ZIP 10[illegible] EMPLOYER TELEPHONE NUMBER (—)
EMAIL ADDRESS ______

2nd CO-BORROWER ______ TELEPHONE NUMBER ( )
ACCOUNT NUMBER ______ ALTERNATE PHONE NUMBER ( )
ADDRESS ______ EMPLOYER NAME ______
CITY ______ STATE ___ ZIP ___ EMPLOYER TELEPHONE NUMBER ( )
EMAIL ADDRESS ______

N/A

6C-IFB2-PS 12/04

DETAILED LIST OF REVENUE AND EXPENSE

	TYPE OF MONTHLY INCOME	AMOUNT
1	Net Employment Income	[redacted]
2	Net Self-Employment	[redacted]
3	Investments (interest, dividends, rental income, etc)	[redacted]
4	Non-Taxable Income	[redacted]
5	Other:	[redacted]
6	Total (add items 1 through 5)	[redacted]

	TYPE OF MONTHLY EXPENSE		AMOUNT
1	Rent/Mortgage, Homeowner/Condominium Fees		[redacted]
2	Food		[redacted]
3	Utilities		
4	Household Expenses		
5	Clothing		
6	Medical/Dental (non-reimbursable)		[redacted]
7	Insurance Premiums		[redacted]
8	Automobile Loan Payments		[redacted]
9	Transportation Expenses		[redacted]
10	Student Loan Payments		
	Name of Creditor	Monthly Payments	
	LES.	[redacted]	[redacted]
	Total (for item 10.) (If additional space is needed, please attach a separate sheet of paper)		
11	Credit Card Payments		
	Name of Creditor	Monthly Payments	
	Total (for item 11.) (If additional space is needed, please attach a separate sheet of paper)		
12	Other Ordinary and Necessary Living Expenses		
13	TOTAL (for items 1. through 12.)		[redacted]

Please return completed form to:
AES • P.O. Box 2461 • Harrisburg, PA 17105-2461
Fax:
717-720-2774 or 717-720-3931

Earning Statement

GREGORY P WERNER
9 ELMWOOD DR
BREWSTER NY 10509

The Premier Collection LLC.
250 Kisco Ave., Mt. Kisco, NY 10549
(914) 345-8657
www.ThePremierCollection.com

Type	Rate	Hours	Current	YTD		
REG	[redacted]	[redacted]	[redacted]	[redacted]	Comp #	9
O/T	[redacted]	[redacted]	[redacted]	[redacted]	Dept #	65
BCK				[redacted]	Emp #	1787
HBJ				[redacted]	Check #	
COM				[redacted]	Batch #	43
					Check #	12516
					SSN	[redacted]
					Per Beg	10/11/08
					Per End / Pay Date	10/17/08

Type	Amt	YTD	Type	Current	YTD
AS		[redacted]	A/R	[redacted]	[redacted]
			MED	[redacted]	[redacted]
			SDI	[redacted]	[redacted]
			7791	[redacted]	[redacted]

Gross	Fed W/H	FICA	Medicare	State	Local	Net
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Memo:

The Premier Collection LLC.
250 Kisco Ave., Mt. Kisco, NY 10549
(914) 345-8657
www.ThePremierCollection.com

JP Morgan Chase Bank N.A
55 Main street
Mount Kisco, NY 10549

50-235/219 760

Pay [illegible] [redacted]

**********************************NON NEGOTIABLE VOID**********************************

GREGORY P WERNER
9 ELMWOOD DR
BREWSTER NY 10509

Exhibit "C"

ITS31[redacted]4836; AES/PA VTAM NAPG TSX31
DATE 12/02/14 17:09:57 DEFERMENT/FORBEARANCE LOAN DETAIL

BORROWER SSN: [redacted]-4836 NAME: GREGORY P WERNER
1ST DISB DATE: 01/17/06 OWNER: NCT LOAN PGM: ALPLN
LOAN SEQ: 001 GUARANTOR: TERI

DEFER/FORB TYP	BEGIN DATE	END DATE	GRACE END DATE	CAP IND	DAYS USED	DAYS LEFT	TOTL MOS USED	CERT DATE
F - TEMP HRDSH	07 01 08	12 30 08		Y	183	0	12.0	09 20 08
F - TEMP HRDSH	12 01 07	05 31 08		Y	183	0	12.0	02 21 08

F1=HELP F3=EXIT F5=RFR F6=ELG F7=BKWD F8=FWD F9=PRT F10=HIST F12=CAN

ExC

[redacted] Dec 2, 2014 5:10:05 PM

Exhibit "D"

ITS2X[redacted]4836; AES/PA VTAM NAPG TSX2Y

DATE 12/02/14 17:10:11 REPAYMENT SCHEDULE SUMMARY SELECTION PAGE 1 OF 2

BORROWER SSN [redacted]-4836 NAME GREGORY P WERNER

SEL	STA	SCHED TYPE	INSTALL AMOUNT	REPAY LVLS	REPAY TERM	1ST DUE DATE	1ST DISB DATE	LOAN PGM	OWNER
1	I	L	114.85	2	226	02/03/09	01/17/06	ALPLN	NCT
2	I	L	[redacted]	[redacted]	[redacted]				NCT
3	I	L	[redacted]		[redacted]				NCT
4	I	L	[redacted]		[redacted]				NCT
5	I	L	111.51	2	231	08/18/08	01/17/06	ALPLN	NCT
6	I	L	[redacted]	[redacted]	[redacted]				NCT
7	I	L	[redacted]		[redacted]				NCT
8	I	L	[redacted]		[redacted]				NCT
9	I	L	118.16	2	233	07/04/08	01/17/06	ALPLN	NCT
10	I	L	[redacted]	[redacted]	[redacted]				NCT
11	I	L	[redacted]		[redacted]				NCT
12	I	L	[redacted]		[redacted]				NCT

SELECTION __

F1=HELP F3=EXIT F5=RFR F7=BKWD F8=FWD F9=PRT F12=CAN

Ex D

[redacted] Dec 2, 2014 5:10:15 PM

ITS2X[redacted]4836; AES/PA VTAM NAPG TSX2Y

DATE 12/02/14 17:10:17 REPAYMENT SCHEDULE SUMMARY SELECTION PAGE 2 OF 2

BORROWER SSN [redacted]-4836 NAME GREGORY P WERNER

SEL	STA	SCHED TYPE	INSTALL AMOUNT	REPAY LVLS	REPAY TERM	1ST DUE DATE	1ST DISB DATE	LOAN PGM	OWNER
1	I	L	126.90	2	239	12/18/07	01/17/06	ALPLN	NCT
2	I	L	[redacted]	[redacted]	[redacted]				NCT
3	I	L	[redacted]		[redacted]				NCT
4	I	L	[redacted]		[redacted]				NCT
5	I	L	114.03	2	239	12/18/06	01/17/06	ALPLN	NCT

SELECTION __

F1=HELP F3=EXIT F5=RFR F7=BKWD F8=FWD F9=PRT F12=CAN

[redacted] Dec 2, 2014 5:10:21 PM

Exhibit "E"

[redacted]

Invacare Corp. v. John Nageldinger & Son, Inc., 576 F. Supp. 1542 (E.D.N.Y. 1984)

U.S. District Court for the Eastern District of New York - 576 F. Supp. 1542 (1984)
January 5, 1984

---

576 F. Supp. 1542 (1984)

INVACARE CORP., Plaintiff,
v.
JOHN NAGELDINGER & SON, INC., Defendant.

No. CV 82-3234.

United States District Court, E.D. New York.

January 5, 1984.

***1543** Choate, Moore, Hahn & McGarry, James McGarry, Harold A. Meriam, III, New York City, for plaintiff.

Somer & Wand, P.C., Carl F. Wand, Commack, N.Y., for defendant.

MEMORANDUM AND ORDER

PLATT, District Judge.

This is a diversity action for an alleged breach of contract. Plaintiff, Invacare Corporation, which manufactures and sells medical goods, is an Ohio corporation with its principal place of business in Elyria, Ohio, and defendant, John Nageldinger & Son, Inc., is a New York corporation. The complaint alleges that, pursuant to contract, plaintiff shipped and defendant received and accepted goods for which defendant has failed to make payment in the amount of $21,528.28.

Defendant moves to dismiss on the ground that plaintiff is doing business in New York in violation of New York Business Corporation Law § 1312(a) (BCL § 1312(a)) and thus is barred from maintaining a suit in New York. For the reasons stated herein, we deny defendant's motion.

BCL § 1312(a) provides:

> A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees, penalties and franchise taxes for the years or parts thereof during which it did business in this state without authority. This prohibition shall apply to any successor in interest of such foreign corporation.

If a corporation is doing business within the meaning of section 1312(a) it is precluded from maintaining an action not only in the State courts of New York but also in the Federal courts. *Netherlands Shipmortgage Corp. v. Madias,* 717 F.2d 731, 735 (2d Cir. 1983). Accordingly, if plaintiff is doing business in violation of BCL § 1312(a), we must dismiss the action.

In support of its contention that the Invacare Corporation is doing business under BCL § 1312 (a), defendant points to the following factors: (1) plaintiff maintains five full time sales representatives and a sales manager who solicit sales in New York; (2) plaintiff derived gross sales of over $1 million in New York in 1980, over $2 million in 1981, and over $3 million in 1982; (3) plaintiff's representatives attended trade shows in New York; and (4) plaintiff has a network of over 500 customers throughout the State of New York. In response, plaintiff asserts that: (1) plaintiff's only business activity in New York is the mere solicitation of sales in interstate commerce; (2) the salesmen who solicit sales from New York must forward orders to Elyria, Ohio for acceptance and processing; (3) there are no sales offices or sales outlets in New York; (4) salesmen have toll free "800" telephone numbers on the business cards that are answered in Ohio; (5) there are no warehouses or stock of goods in New York; (6) there are no repair facilities in New York; and (7) plaintiff maintains no bank accounts in New York.

There is no precise measure for evaluating whether the nature or extent of the activities of a foreign corporation within New York constitute doing business within the meaning of BCL § 1312(a). Not all business activity amounts to doing business and determinations must be made on a case-by-case basis. *Netherlands Shipmortgage Corp.*, 717 F.2d at 735; *Oliver**1544***Promotions Ltd. v. Tams-Witmark Music Library Inc.*, 535 F.Supp. 1224, 1228 (S.D. N.Y.1982); *Conklin Limestone Co. v. Linden*, 22 A.D.2d 63, 64, 253 N.Y.S.2d 578, 580 (3d Dept.1964). However, general guidelines can be derived from the cases addressing the BCL § 1312(a) doing business issue.

In order for a foreign corporation to be doing business, the New York courts have required that the intrastate activity be permanent, continuous, and regular. *See, e.g., Parkwood Furniture Co. v. OK Furniture Co.*, 76 A.D.2d 905, 429 N.Y. S.2d 240 (2d Dept.1980) (mem.); *Continental Shows, Inc. v. Essex County Agricultural Society, Inc.*, 62 A.D.2d 1103, 404 N.Y.S.2d 418 (3d Dept.1978) (mem.); *Colonial Mortgage Co. v. First Federal Savings & Loan Ass'n of Rochester*, 57 A.D.2d 1046, 395 N.Y.S.2d 798 (4th Dept.1977) (mem.). The standard for evaluating business activity under BCL § 1312(a) is stricter than that used for determining whether the intrastate business activity is sufficient for jurisdictional purposes; some activity that might subject a foreign corporation to the jurisdiction of the New York courts will not suffice to constitute doing business within the meaning of section 1312(a). *Netherlands Shipmortgage Corp.*, 717 F.2d at 736; *Papers Manufacturers Co. v. Ris Paper Co., Inc.*, 86 Misc.2d 95, 97-98, 381 N.Y.S.2d 959, 962 (Civ.Ct.1976). To be doing business, "the foreign corporation must do more than make a single contract, engage in an isolated piece of business, or an occasional undertaking; it must maintain and carry on business with some continuity of act and purpose." *International Fuel & Iron Corp. v. Donner Steel Corp.*, 242 N.Y. 224, 230, 151 N.E. 214, 215 (1926). If the contacts with New York State are merely incidental to the solicitation of business and the sale and delivery of merchandise into the State, the activity is in essence interstate commerce and not subject to BCL § 1312(a). *Papers Manufacturers Co.*, 86 Misc.2d at 98, 381 N.Y.S.2d at 963. However, if the activity involves local business on more than an isolated basis, the foreign corporation must comply with the statute. *Id.* (see cases cited therein).

The defendant has pointed to at least four business contacts in New York and argues that they are evidence of permanent, regular and continuous intrastate activity. The plaintiff argues that these contacts are insufficient to constitute "doing business." Indeed, when each activity is evaluated independently from other contacts, courts have found the activity insufficient to invoke BCL § 1312(a). For example, the solicitation of sales within New York, *International Fuel & Iron Corp.*, 242 N.Y. at 229, 151 N.E. at 215; *Manhattan Fuel Co., Inc. v. New England Petroleum Corp.*, 422 F.Supp. 797, 802 (S.D.N.Y. 1976), *aff'd*, 578 F.2d 1368 (2d Cir.1978); *Stafford Higgins Industries v. Gaytone Fabrics, Inc.*, 300 F.Supp. 65, 67 (S.D.N.Y. 1969), the presence of sales representatives within New York, *Manhattan Fuel Co., Inc.*, 422 F.Supp. at 802; *Stafford Higgins Industries*, 300 F.Supp. at 67; *Librairie Hachette S.A. v. Paris Book Center, Inc.*, 309 N.Y.S.2d 701, 703 (Sup.Ct.1970), the attendance by plaintiff's representatives at trade shows within New York, *Loria & Weinhaus, Inc. v. H.R. Kaminsky &*

Son, 495 F.Supp. 253, 257 (S.D.N.Y.1980), and a high volume of sales within New York, *Manhattan Fuel Co., Inc.,* 422 F.Supp. at 802; *Colonial Mortgage Co. v. First Federal Savings & Loan Ass'n of Rochester,* 57 A.D.2d 1046, 395 N.Y.S.2d 798 (4th Dept.1977), have all been found not to constitute "doing business." However, the defendant contends that, if viewed collectively, these activities fall within the contemplation of BCL § 1312(a).

In determining whether a foreign corporation is in violation of BCL § 1312(a), New York courts have not only evaluated the intrastate quality of the activity, *see, e.g., Papers Manufacturers Co.,* 86 Misc.2d at 98, 381 N.Y.S.2d at 963 (intrastate business conduct both regular and continuous and foreign corporation subject to statute); *Conklin Limestone,* 22 A.D.2d at 63, 253 N.Y.S.2d at 579 (ongoing intrastate furnishing and spreading of limestone subjects foreign corporation to statute), but "commonly have based their decisions on the extent, both quantitative and qualitative, of ***1545** the corporation's activity in the state." *Netherlands Shipmortgage Corp.,* 717 F.2d at 738. Although a review of the decisions concerning BCL § 1312(a) has failed to reveal any case with facts similar to the one at hand, the cases hereinafter discussed are illustrative of the various combination of facts that lead to a determination of whether a foreign corporation is doing business.

In *Parkwood Furniture Co. v. OK Furniture Co.,* 76 A.D.2d 905, 429 N.Y.S.2d 240 (2d Dept.1980), the Court found that the foreign corporation's activities were so substantial that the corporation was subject to the qualification statute. The foreign corporation maintained two sales agents, had a repairman who was authorized to do all work for the corporation in New York, sent its president into New York to resolve problems with a purchaser and solicit sales, maintained a special telephone number for sales in New York, and earned over two million dollars in a two year period. The Court held "that this type of regular systematic, extensive and continuous business, resulting in a large volume of sales, both in number and dollar amounts, constitutes the doing of business within the meaning and intent of subdivision (a) of section 1312 of the Business Corporation Law." *Id.* at 905-06, 429 N.Y. S.2d at 241.

In *Colonial Mortgage Co. v. First Federal Savings & Loan Ass'n of Rochester, supra,* on the other hand, the Court held that plaintiff foreign corporation did not maintain regular, continuous and permanent activity and, thus, was not doing business in New York because "[i] t does not maintain a bank account, own real property, maintain an inventory of securities, or an office for the purpose of transacting business, a telephone listing, advertise for the sale of securities or employ any New York resident." 57 A.D.2d at 1047, 395 N.Y.S.2d at 799. The Court found that the volume of sales in New York, over $40,000,000, and the fact that the contract in question was made in New York, were not controlling in the BCL § 1312(a) determination. Rather, the Court indicated that where there was no evidence of localized business activity, section 1312(a) cannot serve to bar a foreign corporation from maintaining an action.

The instant case involves facts that are closer to those in the *Colonial Mortgage Co.* case than to those in the *Parkwood Furniture Co.* ca$e. Here, as in *Colonial Mortgage Co.*, there is no evidence of localized business activity in New York. The plaintiff does not maintain a sales office or a warehouse in New York. Salesman must forward all orders to Ohio for acceptance and processing and can be reached at toll free "800" telephone numbers that are answered in Ohio. Unlike the situation in *Parkwood Furniture Co.*, there are no repair facilities or local telephone numbers for sales in New York. Plaintiff does not maintain a bank account in New York.

This Court, therefore, concludes that the plaintiff does not engage in permanent, continuous, and regular intrastate conduct in New York. Not only do plaintiff's business activities fail to have an intrastate quality, but, collectively, they fail to be so substantial in quantity or quality so as to subject plaintiff to the purview of section 1312(a). In essence, plaintiff's activities amount to the interstate solicitation of instate sales and delivery pursuant thereto, which is not subject to New York's qualification statute. *Manhattan Fuel Co.*, 422 F.Supp. at 802; *Colonial Mortgage Co.*, 57 A.D.2d at 1047, 395 N.Y.S.2d at 800. Accordingly, we hold that plaintiff is not "doing business" in New York for the purposes of BCL § 1312(a), and defendant's motion to dismiss is hereby denied.

SO ORDERED.

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Exhibit "F"

SUPREME COURT OF THE STATE OF NEW YORK INDEX # 16 9/2014 R
COUNTY OF PUTNAM SUMMONS

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S)
PLAINTIFF,

PLAINTIFF'S ADDRESS
800 BOYLSTON ST FL34
BOSTON, MA 02199

X

- AGAINST -

GREGORY WERNER

DEFENDANT(S).

DEFENDANT'S ADDRESSES
6 NORTH RD
BREWSTER NY 10509-1014

CONSUMER CREDIT TRANSACTION

THE BASIS OF THE VENUE IS:
A DEFENDANT RESIDES IN THE COUNTY OF PUTNAM
THE TRANSACTION TOOK PLACE IN THE COUNTY OF PUTNAM

TO THE ABOVE NAMED DEFENDANT(S): GREGORY WERNER

YOU ARE HEREBY SUMMONED TO ANSWER THE COMPLAINT IN THIS ACTION AND TO SERVE A COPY OF YOUR ANSWER ON THE PLAINTIFF'S ATTORNEY(S) WITHIN 20 DAYS AFTER THE SERVICE OF THIS SUMMONS, EXCLUSIVE OF THE DAY OF SERVICE (OR WITHIN 30 DAYS AFTER THE SERVICE IS COMPLETE IF THIS SUMMONS IS NOT PERSONALLY DELIVERED TO YOU WITHIN THE STATE OF NEW YORK).

UPON YOUR FAILURE TO ANSWER, JUDGMENT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT, TOGETHER WITH THE DISBURSEMENTS OF THIS ACTION.
DATED THE 16 DAY OF JANUARY , 2014

FILE NO.
MR90000174654

ORIG ACCT# END IN: 1000

FORSTER & GARBUS LLP
ATTORNEY(S) FOR PLAINTIFF
60 MOTOR PARKWAY
COMMACK, NY 11725
(631) 393-9400

NOTE: THE LAW PROVIDES THAT:
(A) IF THIS SUMMONS IS SERVED BY ITS DELIVERY TO YOU PERSONALLY WITHIN THE COUNTY OF PUTNAM YOU MUST APPEAR AND ANSWER WITHIN 20 DAYS AFTER SUCH SERVICE: OR
(B) IF THIS SUMMONS IS SERVED BY DELIVERY TO ANY PERSON OTHER THAN YOU PERSONALLY, OR IS SERVED OUTSIDE THE COUNTY OF PUTNAM , OR BY PUBLICATION, OR BY ANY MEANS OTHER THAN PERSONAL DELIVERY TO YOU WITHIN THE COUNTY OF PUTNAM YOU ARE ALLOWED 30 DAYS AFTER SERVICE IS COMPLETE WITHIN WHICH TO APPEAR AND ANSWER.

2014 JAN 28 PM 2:34
PUTNAM COUNTY CLERK

DEFENDANT'S POB:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

169/2014

FORMAL COMPLAINT

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S)

PLAINTIFF,

- AGAINST -

GREGORY WERNER

DEFENDANT(S).

PLAINTIFF, BY ITS ATTORNEY(S), COMPLAINING OF THE DEFENDANT(S), UPON INFORMATION AND BELIEF, ALLEGES:

1. THAT THE DEFENDANT(S) RESIDES IN THE COUNTY IN WHICH THIS ACTION IS BROUGHT; OR THAT THE DEFENDANT(S) TRANSACTED BUSINESS WITHIN THE COUNTY IN WHICH THIS ACTION IS BROUGHT IN PERSON OR THROUGH HIS AGENT AND THAT THE INSTANT CAUSE OF ACTION AROSE OUT OF SAID TRANSACTION

2. PLAINTIFF IS AUTHORIZED TO PROCEED WITH THIS ACTION.

3. UPON INFORMATION AND BELIEF DEFENDANT(S) BORROWED MONEY FROM PLAINTIFF OR PLAINTIFF'S ASSIGNOR PURSUANT TO A PROMISSORY NOTE.

4. DEFENDANT(S) HAS DEFAULTED ON SAID AGREEMENT AND $ 17,946.28 IS NOW DUE, NO PART OF SAID SUM HAS BEEN PAID ALTHOUGH DULY DEMANDED.

5. DEFENDANT(S) IS IN DEFAULT AND DEMAND FOR PAYMENT HAS BEEN MADE.

2ND CAUSE/ACTION:PLAINTIFF STATED AN ACCOUNT TO DEFENDANT WITHOUT OBJECTION THAT THERE IS NOW DUE PLAINTIFF FROM DEFENDANT(S) THE AMOUNT SET FORTH IN THE COMPLAINT, NO PART OF WHICH HAS BEEN PAID, ALTHOUGH DULY DEMANDED.

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT AGAINST DEFENDANT(S) FOR THE SUM OF 17,946.28
TOGETHER WITH THE DISBURSEMENTS OF THIS ACTION

WE ARE DEBT COLLECTORS; ANY INFORMATION OBTAINED WILL BE USED IN ATTEMPTING TO COLLECT THIS DEBT.

FORSTER & GARBUS LLP
ATTORNEY(S) FOR PLAINTIFF
60 MOTOR PARKWAY
COMMACK, NY 11725

PUTNAM COUNTY CLERK
2014 JAN 28 PM 2:34

DATED: THE 16 DAY OF JANUARY , 2014

MICHAEL LEINOFF JOEL D. LEIDERMAN KEVIN M. KNAB

PURSUANT TO PART 130-1.1-a OF THE RULES OF THE CHIEF ADMINISTRATOR THIS SIGNATURE APPLIES TO THE ATTACHED SUMMONS AND COMPLAINT

Index No. 189 2014 RJI No. Hon.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST (S),

Plaintiff

-against-

GREGORY WERNER

Defendant

AFFIRMATION IN OPPOSITION TO MOTION TO DISMISS

FORSTER & GARBUS LLP
Attorneys for **Plaintiff**

Office and Post Office Address, Telephone
60 VANDERBILT MOTOR PARKWAY
P.O. BOX 9030
COMMACK, NEW YORK 11725
(631) 393-9400

To

Attorney(s) for

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Please take notice

☐ NOTICE OF ENTRY

that the within is a (*certified*) true copy of a
duly entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the HON. one of the judges of the within named court, at
on at M

Dated,

Yours, etc.

FORSTER & GARBUS LLP
Attorneys for

Office and Post Office Address
60 VANDERBILT MOTOR PARKWAY
P.O. BOX 9030
COMMACK, NEW YORK 11725

To

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S),

Plaintiff,

-against-

GREGORY WERNER,

Defendant.

Index No. 169-2014

REPLY AFFIRMATION

RETURN DATE: 12/8/14

Justice Lewis J. Lubell

Mitchell L. Pashkin, an attorney at law duly admitted to practice law in the courts of the State of New York, hereby affirms under penalties of perjury:

1. I am the attorney for Defendant; and I am making this affirmation in reply to Plaintiff's Opposition To Defendant's Motion To Dismiss.

NOTICE OF ASSIGNMENT

2. In paragraph 21 of my affirmation in support of Defendant's Motion To Dismiss, I set forth Plaintiff's inability to obtain a judgment against Mr. Werner if its client cannot prove that each assignor notified Mr. Werner and the co-borrower of the assignment. I set forth several cases supporting my argument. Plaintiff has not disputed my interpretation of the law. Plaintiff's only opposition to this argument consists of the following statement in the Luke Affidavit:

> "11. Upon review of the loan records, on or about March 10, 2006 Defendant was sent notification that Plaintiff is the owner of the loan in this action"

3. This statement does not prove that each assignor notified Mr. Werner and the co-borrower of the assignment. It does not even set forth who sent Defendant the alleged notification. It merely says it was "sent".

LACK OF AUTHORITY TO DO BUSINESS IN NEW YORK

4. Plaintiff admits that it is a foreign corporation with no authority to do business in New York. Plaintiff argues that these facts do not bar it from maintaining this action since it is engaged in interstate commerce and there is no "evidence of localized business activity".

5. This lawsuit, filed, served and prosecuted by Plaintiff's attorneys is "evidence of localized business activity". Plaintiff's attorneys are located in Commack, NY and are Plaintiff's agents. My search of ecourts for cases filed by Plaintiff just in non-Supreme Court courts reveals that since 2011 Plaintiff has filed dozens of cases such as this one in these courts alone; and virtually all of them have been filed by its attorneys in this case. I ask this court to take judicial notice of the information contained on ecourts.

6. I am the former Managing Attorney of Cohen & Slamowitz, LLP in Woodbury, NY. It is a large consumer debt collection law firm representing many large and publicly traded debt buyers such as Midland Funding, LLC (a subsidiary of Encore Capital) and Portfolio Recovery Associates. Based on my former position, I have personal knowledge that debt buyers bring lawsuits as part of its business of collecting on debts it has purchased from an original creditor. It is axiomatic that debt buyers hire law firms such as Plaintiff's and the numerous other New York law firms which do almost nothing but consumer collections

litigation on behalf of debt buyers and original creditors because a part of their business plan is to intentionally bring a lawsuit against a consumer when it has been unsuccessful in getting the consumer to pay the debt without litigation.

7. I also have personal knowledge that accounts such as the one that is the subject of this lawsuit are not sold by original creditors to debt buyers on a one-off basis. They always are sold in large groups commonly known as pools or schedules broken down by state containing hundreds to thousands of accounts in a particular state. As part of the sale of these pools or schedules of accounts, the original creditor provides to the debt buyer a listing of all the accounts contained in the pool or schedule. It is this list or a redacted portion thereof that a debt buyer must produce to prove that it owns the account at issue. If the debt buyer produces a redacted portion, it always refers to the particular pool or schedule of accounts and the date of the sale as proof of the sale. If Plaintiff's attorney would have produced this list or a redacted portion thereof, it would have shown that National Loan Recoveries bought much more than the one account at issue. In fact, in National Loan Recoveries, LLC v. Smith, 950 N.Y.S.2d 609 (N.Y. App. Div., 2012), the court described the underlying action by National Recoveries, LLC, a debt buyer, as follows: "Plaintiff commenced this action to recover for breach of a credit card agreement".

8. Even if the pool or schedule of accounts which contained the account at issue only contained a total of several accounts in New York (highly unlikely based on the aforementioned number of lawsuits throughout the years), this would be enough for National Loan Recoveries to be doing business in New York. See Scaffold-

Russ Dilworth, Ltd. v Shared Management Group, Ltd. 256 AD2d 1087 (4th Dept 1998) (Contractor was "doing business" in the state when it rented scaffolding to eight public and private construction sites); Highfill, Inc. v. Bruce & Iris, Inc., 50 AD3d 742 (2nd Dept 2008) (plaintiff found to be "doing business" in state where plaintiff regularly and continuously solicited potential consumers in New York in effort to persuade them to retain plaintiff to conduct "special sales", conducted 3 such sales totaling $1,750,000 in 2001 and 2002 and 6 sales in 6-month period in 2005 and 2006 totaling $4,850.000). See also Schwarz Supply Source v. Redi Bag USA LLC, 016733/08 (New York Law Journal 1/8/2009):

> “(The nature of the plaintiff's business - the supply of material to retail stores (Complaint ¶3) - necessarily would not include such case law indicia as advertising, and the plaintiff's practice does not require an office, telephone or a sales representative in New York State. Instead, as described herein, the relationship arises out of an Internet auction, initiated by Bed Bath & Beyond and utilized by the plaintiff to provide services to, inter alia, New York businesses. That manner of doing business appears to "sidestep" the traditional case law requirements for "doing business" in New York (see, Airline Exchange, Inc. v. Bag, 266 AD2d 414, 698 NYS2d 694, 2nd Dept., 1999). This defendant has demonstrated that the plaintiff's business activities in New York State are not just "casual or occasional" (Interline Furniture, Inc.v Hodor Industries Corp., 140 AD2d 307, 527 NYS2d 544, 2nd Dept., 1988). The plaintiff cannot insulate itself behind a description of activity that it is "merely" an out-of-state distributor whose activity only occasionally involves New York businesses.”.

9. Plaintiff’s argument also contradict the law in this state as set forth in the below cases. A foreign entity is doing business in New York if its business in New York is "so systematic and regular as to manifest continuity of activity in the jurisdiction". Highfill, Inc. v Bruce and Iris, Inc., 50 AD3d 742, 743 (2d Dept 2008); and S & T Bank v Spectrum Cabinet Sales, 247 AD2d 373, 373 (2d Dept 1998).

10. A foreign entity still can be doing business in New York even if "it has no place of business in New York; owns no property in New York; has no employees, officers or directors residing or working in New York; has no bank accounts, telephone numbers, or mailboxes in New York; does not solicit any business in New York, and does not physically occupy any portion of the Property" MKC-S, Inc. v Laura Realty Co. 2014 NY Slip Op 50650(U).

11. In MKC-S, Inc. v Laura Realty Co. 2014 NY Slip Op 50650(U), the foreign entity rented commercial properties from the owner and then subleased the properties. The court, based on the following appellate cases: Scaffold-Russ Dilworth, Ltd. v Shared Management Group, Ltd. 256 AD2d 1087 (4th Dept 1998); and Parkwood Furniture Co. v OK Furniture Co., 76 AD2d 905, 905 (2d Dept 1980), found that this constituted doing business in New York. This is no different than the business of Plaintiff. It buys debts owed to one entity and then proceeds to collect the debts for itself.

12. My search of ecourts for cases filed by Plaintiff just in non-Supreme Court courts reveals that since 2011 Plaintiff has filed dozens of cases such as this one in these courts alone; and virtually all of them have been filed by its attorneys in this case. This shows that Plaintiff's localized business in New York is "so systematic and regular as to manifest continuity of activity in the jurisdiction".

13. Even if the filing of lawsuits in and of itself does not prove that a company is doing business in New York, a certain volume of lawsuits leads to the presumption if not the conclusion that the company's filing of lawsuits are a part of its business operations and that the company's business in New York is "so

systematic and regular as to manifest continuity of activity in the jurisdiction". This is especially true in the case of a debt buyer such as Plaintiff.

STATUTE OF LIMITATIONS

14. Plaintiff does not appear to oppose any of my legal arguments regarding the statute of limitations, the tolling of the statute of limitations, the statute of frauds or the parole evidence rule.

15. In regard to the existence of something in writing signed by Mr. Werner which legally could toll the statute of limitations, Plaintiff for the first time produces the documents set forth as Exhibit B to its Opposition. These documents actually prove that the statute of limitations was not tolled.

16. Section 3 of these documents states as follows:

> "You must continue making your regular monthly payments until the Forbearance or MGRS has been approved. You will receive written notice of the approval or denial of this request after it has been processed."

Plaintiff has not produced any "written notice of approval"; and therefore by their own terms, the documents set forth as Exhibit B to its Opposition are not binding.

17. Also, even if they are binding, the documents set forth as Exhibit B to its Opposition, do not contain any language providing for a tolling of the statute of limitations, default date, "Deferment End Date", or "Repayment Period".

18. This is relevant in and of itself and also based on the following: Section L. of the loan document alleges as follows: "7. A provision of this Credit Agreement may only be modified if jointly agreed upon in writing by you and me. Any modification will not affect the validity or enforceability of the remainder of this Credit Agreement." Per this section and N.Y. GOB. LAW § 15-301, since the

documents do not contain any language providing for a tolling of the statute of limitations, default date, "Deferment End Date", or "Repayment Period" they cannot alter the terms of the loan document or toll the statute of limitations. North Bright Capital, LLC v 70S Flatbush Realty, 66 AD3d 977, 889 NYS2d 596 (2d Dept 2009).

FAILURE TO ESTABLISH FOUNDATION UNDER CPLR 4518

19. A motion for summary judgment must be supported by an affidavit from a person with personal knowledge. An attorney's affirmation will not suffice to support a summary judgment motion. *See* Citibank (S.D.), N.A. v. Maniaci, 23 Misc. 3d 1103(A), 881 N.Y.S.2d 362; citing 9394 LLC v. Farris , 10 AD3d 708, 782 N.Y.S.2d 281 (2nd Dept. 2004). An affidavit from "a custodian of records of Transworld Systems, Inc. which is a custodian of records for Plaintiff cannot lay the required foundation under CPLR 4518 for the admissions of records which originated an assignor of Plaintiff and then allegedly were transferred to Plaintiff but which are kept in the custody and control of a separate entity. Cach, LLC v NE Enters. LLC, 2014 NY Slip Op 50909(U); JPMorgan Chase Bank, N.A. v S.I. Wood Furniture Corp., 34 Misc. 3d 1214A (N.Y. Sup. Ct. 2012); DeLeon v. Port Auth., 306 A.D.2d 146 (N.Y. App. Div. 1st Dep't 2003); First Interstate Credit Alliance, Inc. v. Sokol, 179 A.D.2d 583 (N.Y. App. Div. 1st Dep't 1992); Velocity Investments, LLC v Cocina, 77 AD3d 1306 (4th Dept. 2010); Rose Med. Acupuncture Servs. P. C. v Specialized Risk Mgt., 4 Misc. 3d 1027[A], 798 **N.Y**.S.2d 348, 2004 NY Slip Op 51078[U], *2-3 [City **Ct**, Mount Vernon 2004]); People v. Cratsley, 86 NY2d 81 (1995); People v. DiSalvo, 284 AD2d

547 (2nd Dept. 2001); Merrill Lynch Business Financial Services, Inc. v Tratoras Construction, Inc., 30 AD3d 336 (1st Dept. 2006); Citibank (South Dakota, NA) v Jamieson, 32 Misc.3d 139(A), 936 NYS2d 57 (App Term, 2d, 11th & 13th Jud Dists 2011); and Gen. Bank v. Mark II Imports Inc., 290 A.D.2d 240 (N.Y. App. Div. 1st Dep't 2002).

WHEREFORE, Plaintiff prays for an order pursuant to (1) CPLR 3211 (a) (5) dismissing this action with prejudice based on Plaintiff filing this action after the expiration of the statute of limitations, (2) CPLR 3211 (a) (3) based on Plaintiff's lack of authority to sue in New York State, and (3) CPLR 3211 (a) (7) for a failure to plead each assignor's communication of the assignment to Defendant, and any other relief which this court deems proper.

Dated: December 5, 2014

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Mitchell L. Pashkin, Esq.
Attorney For Defendant
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(631) 629-7709

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S),

Plaintiff,

-against-

GREGORY WERNER,

Defendant.

Index No. 169-2014

AFFIRMATION OF SERVICE

Mitchell L. Pashkin, an attorney at law duly admitted to practice law in the courts of the State of New York, hereby affirms under penalties of perjury:

That on December 5, 2014, I served this Notice of Motion and supporting papers, if any, upon Plaintiff by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State addressed to each of the following persons at the last known address set forth after each name:

Forster & Garbus LLP
Attorneys For Plaintiff
60 Motor Parkway
Commack, NY 11725

Dated: December 5, 2014
Huntington, NY

____

Mitchell L. Pashkin, Esq.
Attorney For Defendant
775 Park Avenue, Ste. 255
Huntington, NY 11743
(631) 629-7709

Index No. 169-2014

NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-1, A DELAWARE STATUTORY TRUST(S),

Plaintiff,

-vs-

GREGORY WERNER,

Defendant.

REPLY TO OPPOSITION TO MOTION TO DISMISS

Mitchell L. Pashkin certifies that, to the best of his knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the annexed paper(s) or the contentions therein are not frivolous as defined in 22 NYCRR 130-1.1.(c).

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